



August 2017

## **SORNA Substantial Implementation Review Pueblo of San Felipe**

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 Pueblo of San Felipe 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 the Pueblo of San Felipe's SORNA substantial implementation materials and has found that the Pueblo of San Felipe 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 pueblo is located. However, although the Pueblo of San Felipe has not substantially implemented the SORNA requirements, the SMART Office will not be delegating the Pueblo of San Felipe's sex offender responsibilities at this time.

The Pueblo of San Felipe has entered into a full memorandum of agreement (MOA) with the Sandoval County Sheriff's Office wherein the pueblo assigns its law enforcement responsibilities in regards to sex offender registration and notification to the Sandoval County Sheriff's Office and New Mexico. Therefore, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation.

On April 7, 2017, the Pueblo of San Felipe submitted a substantial implementation package that included background information on the pueblo and its criminal justice system, courts and police department, its sex offender registration ordinance, and its MOA with the Sandoval County Sheriff's Office. In addition, email and an in-person meeting with an attorney for the pueblo filled in gaps in information, 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 the Pueblo of San Felipe meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify whether the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure(s) does not substantially disserve the purpose of that requirement.

Based on our review of materials submitted by the Pueblo of San Felipe, our understanding is that the Pueblo of San Felipe has entered into a full MOA with the Sandoval County Sheriff's Office wherein the pueblo assigns its law enforcement responsibilities in

regards to sex offender notification to the Sandoval County Sheriff's Office and New Mexico. Therefore, the Pueblo of San Felipe deviates where New Mexico deviates.

The Pueblo of San Felipe 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. While not necessary for substantial implementation purposes, the SMART Office encourages the Pueblo of San Felipe to work toward rectifying the deviations that do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA.

This report is a comprehensive review and is intended to detail significant areas in which the Pueblo of San Felipe has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the pueblo, and get back in touch with us to develop a strategy to address these 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 or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to the National Crime Information Center (NCIC)/National Sex Offender Registry (NSOR) and the jurisdiction's public sex offender registry website.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets 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.

Although the Pueblo of San Felipe's sex offender registration ordinance mandates that all required SORNA offenses are included in the pueblo's registration scheme, the Sandoval County Sheriff's Office will not include offenses that are outside the scope of New Mexico's own registration requirements. New Mexico includes attempted and completed state, federal, tribal and military convictions that are "equivalent" to New Mexico-registerable offenses. However, the reliance on statutory equivalence alone causes some required SORNA offenses to not be included in New Mexico's registration system. (See attached "SORNA Substantial Implementation Review: State of New Mexico [October 2013]" for a detailed analysis regarding this subsection.) Additionally, New Mexico's registration of SORNA-registerable juveniles is discretionary, rather than mandatory, which does not meet the SORNA requirements of this section.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico does not meet SORNA requirements in this area, the Pueblo of San Felipe 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. Although the Pueblo of San Felipe's sex offender registration ordinance correctly places federal, state and tribal statutes at least within the minimum appropriate SORNA tiers, New Mexico's classification of its offenders and associated registration requirements deviates from SORNA's requirements. However, pursuant to the MOA, the Sandoval County Sheriff's Office will tier offenses based on New Mexico's own requirements. New Mexico deviates from this section's SORNA requirements. (See attached "SORNA Substantial Implementation Review: State of New Mexico [October 2013]" for a detailed analysis regarding this subsection.)

These deviations do not substantially disserve the purposes of 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.

As discussed above, the ordinance enacted by the Pueblo of San Felipe addresses all of SORNA's requirements in this section. However, pursuant to the MOA, the Sandoval County Sheriff's Office will only collect the registration information required under New Mexico's laws. New Mexico deviates from this section's SORNA requirements. (See attached "SORNA Substantial Implementation Review: State of New Mexico [October 2013]" for a detailed analysis regarding this subsection.)

These deviations do not substantially disserve the purposes of 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.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets the SORNA requirements in this section.

## **VI. Initial Registration: Timing and Notice**

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.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets 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).

Pursuant to the MOA, sex offenders living, working or attending school on Pueblo of San Felipe lands are subject to the provisions of state law. However, New Mexico has had its registration system in place since 1995, and only registers offenders who have been sentenced since July 1, 1995 (or were incarcerated, on parole or on probation for a sex offense on that date).

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 sex offender resides in a jurisdiction, he or she 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, he or she 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 and intends to travel outside the United States, he or she must 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 his or her intent to relocate to another country to live, work or attend school, 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.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets the SORNA 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. 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.

SORNA also 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.

Pursuant to the MOA, sex offenders living, working or attending school on the lands of the Pueblo of San Felipe are subject to the provisions of New Mexico law.

### **A. Duration of Registration**

New Mexico requires that its highest level offenders register for life. The remaining offenders register for 10 years from the date of their sentencing, or release from incarceration, parole or probation, whichever is later. (See attached "SORNA Substantial Implementation Review: State of New Mexico [October 2013]" for a detailed analysis regarding this subsection.)

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

## **B. Frequency of Registration**

New Mexico requires that its highest level (lifetime) offenders register in person on a quarterly basis. All other offenders (10-year) register in person on an annual basis. (See attached “SORNA Substantial Implementation Review: State of New Mexico [October 2013]” for a detailed analysis regarding this subsection.)

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

Pursuant to the MOA, the Pueblo of San Felipe’s registered sex offender data are posted on New Mexico’s public sex offender registry website. However, New Mexico does not meet the SORNA requirements of this section because it does not display offenders convicted of some SORNA required offenses and does not display some SORNA required information. (See attached “SORNA Substantial Implementation Review: State of New Mexico [October 2013]” for a detailed analysis regarding this subsection.)

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff’s Office, and New Mexico does not meet SORNA requirements in this area, the Pueblo of San Felipe does not meet 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.

The Pueblo of San Felipe has an MOA with the Sandoval County Sheriff’s Office to provide community notifications for the pueblo. New Mexico has implemented an email notification system as part of its public sex offender registry website. This will meet SORNA’s community notification requirements except for those offenders who are not listed on the public registry website, as described in section X of the attached “SORNA Substantial Implementation Review: State of New Mexico (October 2013).”

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

## **XII. 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.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets the SORNA requirements in this section.

## **XIII. 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.

Because the Pueblo of San Felipe has chosen to meet its SORNA obligations through an MOA with the Sandoval County Sheriff's Office, and New Mexico meets SORNA requirements in this section, the Pueblo of San Felipe meets the SORNA requirements in this section.

## **XIV. Other Considerations**

There are no additional considerations.

## **Conclusion**

The Pueblo of San Felipe has chosen to implement its program via an MOA with the Sandoval County Sheriff's Office, assigning all of its SORNA responsibilities, for the time being, to New Mexico. Thus, consistent with the New Mexico finding, the Pueblo of San Felipe has been found to have not substantially implemented SORNA for reasons cited throughout this review.

Although the Pueblo of San Felipe has not substantially implemented the SORNA requirements, the SMART Office will not be delegating the pueblo's sex offender responsibilities. The pueblo has a functioning system through an MOA and, at this time, 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 the Pueblo of San Felipe to the sex offender registration and notification program will require a subsequent review by the SMART Office.

We encourage the Pueblo of San Felipe to contact the SMART Office with any questions or concerns regarding this finding, and to work toward meeting the provisions detailed in the

report that do not meet the SORNA requirements in order to achieve substantial implementation of SORNA in the future.