



February 2015

## **SORNA Substantial Implementation Review Pueblo of Santa Clara**

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 Santa Clara for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of the Pueblo of Santa Clara's SORNA substantial implementation packet and has found that The Pueblo of Santa Clara has not substantially implemented SORNA at this time, but should not be delegated.

On July 25, 2013, the Pueblo of Santa Clara submitted a substantial implementation package including background information on the tribe and its criminal justice system, courts, and police department, policies and procedures regarding sex offender registration, its sex offender registration law and other laws, as well as forms and memoranda of agreement with other law enforcement agencies. In addition, email and phone correspondence with Judge Frank DeMolli and Roger Naranjo, Police Chief, filled in gaps in information and procedure, which informed our review.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 13 sections addressing the SORNA requirements. Under each section, we indicate whether the Pueblo of Santa Clara 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 meet SORNA requirements or whether the departure(s) does or does not substantially disserve the purpose of that requirement.

The Pueblo of Santa Clara 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.

The Pueblo of Santa Clara is also encouraged to work toward rectifying the deviations which do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA, however this is not necessary for substantial implementation purposes.

This report is a comprehensive review and is intended to detail significant areas in which the tribe has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the tribe, and get back in touch with us to develop a strategy to address these remaining issues. The SMART Office remains dedicated to working with the Pueblo

of Santa Clara to continue its excellent work while modifying those parts of its registration and notification program that do not comply with SORNA.

Based on our review of materials submitted by the Pueblo of Santa Clara, our understanding is that the Pueblo of Santa Clara has entered a full Memorandum of Agreement (MOA) with the New Mexico Department of Public Safety, Rio Arriba County Sheriff and Santa Fe County Sheriff wherein the vast majority of the registration, notification, and enforcement responsibilities for the Pueblo of Santa Clara will be handled by the State or surrounding counties.

### **I. Immediate Transfer of Information**

SORNA requires that when an offender initially registers or updates his or her information in a jurisdiction, that this registration information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Pursuant to the memorandum of agreement, the Rio Arriba and Santa Fe County Sheriff's Offices collect the Pueblo of Santa Clara's sex offender registration information and provide it to the New Mexico Department of Public Safety, who registers the offender with the New Mexico sex offender registry, which includes posting the information on New Mexico's public sex offender registry website and submitting the registration information to the federal databases, including NCIC/NSOR.

The Pueblo of Santa Clara meets the SORNA requirements of 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 Santa Clara's sex offender registration code and policies and procedures manual mandate that all required SORNA offenses are included in the jurisdiction's registration scheme, the Rio Arriba and Santa Fe County Sheriff's Offices and the New Mexico Department of Public Safety will not include offenses that go outside the scope of New Mexico's own registration scheme. New Mexico includes attempted and completed state, federal, tribal, and military convictions which are "equivalent" to New Mexico-registration offenses. The reliance on statutory equivalence alone, however, causes some required SORNA offenses to not be included in the registry scheme. (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 Santa Clara has chosen to meet its SORNA obligations through an MOA with New Mexico, and because the state does not meet SORNA requirements in this area, the Pueblo of Santa Clara 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 Santa Clara's sex offender registration code correctly places federal, state and tribal statutes at least within the minimum appropriate SORNA tiers, the State of New Mexico's classification of its offenders and associated registration requirements deviates from SORNA's requirements. (See attached "SORNA Substantial Implementation Review: State of New Mexico (October 2013)" for a detailed analysis regarding this subsection).

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

### **IV. Required Registration Information**

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry. As discussed above, although the Code enacted by the Pueblo of Santa Clara addresses all of SORNA's requirements in this section, our understanding is that the MOA will only enable registration of the information required to be gathered under the state's laws.

Although the Pueblo of Santa Clara's sex offender registration code and policies and procedures manual mandates that all SORNA required information is collected, the Rio Arriba and Santa Fe County Sheriff's Offices and the New Mexico Department of Public Safety will not collect information that is not captured in the State's own registration scheme. 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.

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

### **V. Where Registration is Required**

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

The Pueblo of Santa Clara meets all of 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.

The Pueblo of Santa Clara 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).

Pursuant to the MOA, sex offenders living, working, or attending school on the lands of the Pueblo of Santa Clara will be subject to the provisions of state law, without limitation. 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).

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

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

SORNA requires that when a sex offender resides in a jurisdiction, 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.

The Pueblo of Santa Clara meets all of 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.

Pursuant to the MOA, sex offenders living, working, or attending school on the lands of the Pueblo of Santa Clara will be subject to the provisions of state law.

### **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.

New Mexico requires that its highest-level offenders register for life. The remaining offenders register for ten years from the date of their sentencing, or release from incarceration, parole or probation, whichever is later (see Section III, above).

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

### **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.

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.

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

## **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.

The Pueblo of Santa Clara has a memorandum of agreement with the New Mexico Department of Public Safety to have New Mexico post the Pueblo of Santa Ana's registered sex offender data 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 Santa Clara has chosen to meet its SORNA obligations through an MOA with New Mexico, and because the state does not meet SORNA requirements in this area, the Pueblo of Santa Clara 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 Santa Clara has a memorandum of agreement with the New Mexico Department of Public Safety to have New Mexico provide community notifications for the tribe. 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)".

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

## **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.

The Pueblo of Santa Clara meets all of 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.

The Pueblo of Santa Clara meets all of the SORNA requirements in this section.

#### **Conclusion**

The Pueblo of Santa Clara has put forth exceptional work and effort in adopting SORNA and establishing a sex offender registration program. The Pueblo of Santa Clara has established a sex offender registration program consistent with the State of New Mexico, within which the Pueblo of Santa Clara lies. Consistent with our finding for the State of New Mexico, the Pueblo of Santa Clara has been found to have not substantially implemented SORNA for reasons cited throughout the report.

Although the Pueblo of Santa Clara has not substantially implemented the SORNA requirements, the SMART Office will not be delegating the tribe's sex offender responsibilities. The tribe is operating a functioning system on par with that of the State of New Mexico and, at this time, SMART finds that delegation would not lead to greater SORNA implementation. However, the SMART Office findings regarding substantial implementation are on-going. Thus, any changes by either New Mexico or the Pueblo of Santa Clara to the sex offender registration and notification programs will require a subsequent review by the SMART Office.

We encourage the Pueblo of Santa Clara to contact the SMART Office with any questions or concerns regarding this finding, and to work towards 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. Thank you for the work and effort towards adopting SORNA and enhancing the sex offender registration and notification system.