



June 2015

## **SORNA Substantial Implementation Review Swinomish Indian Tribal Community**

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 Swinomish Indian Tribal Community 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 Swinomish Indian Tribal Community's SORNA substantial implementation packet and has found that the Swinomish Indian Tribal Community has not substantially implemented SORNA at this time, but should not be delegated.

On July 30, 2014, the Swinomish Indian Tribal Community 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 used pursuant to sex offender registration, notification and tracking. In addition, email and phone correspondence with the Swinomish Indian Tribal Community's Primary SORNA contact 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 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Swinomish Indian Tribal Community 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 or does not substantially disserve the purpose of that requirement. In other words, the Swinomish Indian Tribal Community is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but it may not be 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 Swinomish Indian Tribal Community to continue its excellent work while modifying those parts of its registration and notification program that do not comply with SORNA.

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

SORNA requires that when an offender initially registers and/or updates his 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.

The Swinomish Indian Tribal Community 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 are included in a jurisdiction's registration scheme.

However, because the Swinomish Indian Tribal Community follows Washington's registration and notification scheme, it does not include all of the offenses required by SORNA. It appears that offenses committed in the District of Columbia, a United States territory, or any tribe operating as a SORNA registration jurisdiction will not be captured in this scheme, unless it is an offense substantially similar to a Washington State sex offense. (See attached "SORNA Substantial Implementation Review: State of Washington" for a detailed analysis regarding this subsection).

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

## **III. Tiering of Offenses**

SORNA requires that offenses be classified based on the nature of the offense of conviction, established through a baseline three-tier classification system. The Swinomish Indian Tribal Community follows the Washington State system for local area consistency and has adopted Washington State's three-category system for registration (10-year, 15-year, and lifetime registration offenses).

Furthermore, because the Swinomish Indian Tribal Community follows Washington's registration and notification scheme, it does not place many of its statutes within SORNA's three tiers. (See attached "SORNA Substantial Implementation Review: State of Washington" for a detailed analysis regarding this subsection).

Because the tribe, in following Washington State, does not correctly classify the majority of its offenses in the minimum SORNA tier, the Swinomish Indian Tribal Community does not meet the SORNA requirements of 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. The Swinomish Indian Tribal Community does not require the collection of the following information required by SORNA in its registry:

- Palm prints

The item is requested on the Swinomish Indian Tribal Community's registration form and required in their code. However, the Skagit County Sheriff's Office is not able to collect palm prints or submit them to the relevant database.

This deviation does not substantially disserve the purposes of the 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.

The Swinomish Indian Tribal Community meets all of the SORNA requirements in this section.

#### **VI. Initial Registration:**

SORNA requires that when an offender is incarcerated within the jurisdiction, that registration 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 Swinomish Indian Tribal Community 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, 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).

The Swinomish Indian Tribal Community meets all of the SORNA requirements in this section.

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

SORNA requires that when an offender resides in a jurisdiction, that the sex offender 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, that the sex offender 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, 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 Swinomish Indian Tribal Community 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. 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.

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

**A. Duration of Registration:**

The Swinomish Indian Tribal Community requires that offenders register for the following duration of time after their release from incarceration or sentencing: Tier I offenders register for 10 years, Tier II offenders register for 15 years, and Tier III offenders register for Life.

**B. Frequency of Registration:**

The Swinomish Indian Tribal Community conducts home-visits to registered sex offenders' reported residences for purposes of verification and keeping their registration current from the time of release from custody (for a sex offender who is incarcerated for the offense) or from the date of sentencing (for a sex offender who is not incarcerated for the offense). The frequency of these registration verification home-visits is determined by application of the Washington State Sex Offender Risk Level Classification Screening Tool.

**C. Reduction of Registration Period:**

The Swinomish Indian Tribal Community permits a Tier II offender to have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years, and an offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier III registration and he or she has maintained a clean record for 25 consecutive years.

**D. Clean Record Requirement:**

A sex offender has a clean record if he or she has satisfied the following requirements: 1) he or she has not been convicted of any offense contained within section STC 4-02 of the Swinomish Indian Tribal Community's sex offender registry code or a similar crime 2) he or she has not been convicted of any sex offense 3) he or she has successfully completed, without revocation, any period of supervised release, probation, or parole and 4) he or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

Because the Swinomish Indian Tribal Community does not meet the minimum verification and appearance requirements described above, the Swinomish Indian Tribal Community 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.

The Swinomish Indian Tribal Community meets all of 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 Swinomish Indian Tribal Community meets all 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.

The Swinomish Indian Tribal Community 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 Swinomish Indian Tribal Community meets all of the SORNA requirements in this section.

#### **XIV. Other Considerations**

There are no other considerations.

### **Conclusion**

The Swinomish Indian Tribal Community has established a sex offender registration program consistent with Washington State, within which the Swinomish Indian Tribal Community's Reservation lies. Consistent with the Washington State finding, the Swinomish Indian Tribal Community has been found to have not substantially implemented SORNA for reasons cited throughout the report.

Although the Swinomish Indian Tribal Community 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 Washington State 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 Washington State or the Swinomish Indian Tribal Community to the sex offender registration and notification programs will require a subsequent review by the SMART Office.

We encourage the Swinomish Indian Tribal Community 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.