



September 2011

## **SORNA Substantial Implementation Review State of Tennessee**

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 State of Tennessee 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 Tennessee's SORNA substantial implementation packet and has found that the State of Tennessee has substantially implemented SORNA.

On July 6, 2011 the Tennessee Bureau of Investigation submitted a substantial implementation package that included a filled-in copy of the Substantial Implementation Checklist, relevant state statutes, and relevant state policies and procedures. In addition, email and phone correspondence with the Tennessee Bureau of Investigation filled in gaps in information and procedure, which informed our review.<sup>1</sup>

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Tennessee 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.

While Tennessee is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended 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.

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<sup>1</sup>The SMART Office had email and phone correspondence with Pam Beck, Legal Advisor to the Tennessee Bureau of Investigation, in July, August and September 2011.

Tennessee 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 be included in a jurisdiction's registration scheme.

Tennessee captures all of the juvenile offenses that SORNA requires Tennessee to capture, with one exception: Tennessee does not require offenders to register on the basis of being adjudicated delinquent for a conspiracy to commit an offense. In addition, by default, offenders who are required to register on the basis of a delinquency adjudication are required to register for life; however, once such an offender reaches the age of 25, the offender can petition the registry for removal, and if the offender has not been adjudicated delinquent for or convicted of any new sex offense, he will be removed from the registry.

This deviation does not substantially disserve SORNA's requirements.

## **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. Tennessee utilizes a two-category system (registrants who are eligible to petition for removal after ten years; and lifetime registrants), the structure of which does not substantially disserve the requirements identified in SORNA<sup>2</sup>; however, Tennessee does not correctly classify many of its offenders in the appropriate categories.

The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Tennessee's placement of these statutes within the SORNA three tier levels. Tennessee correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions (see the Appendix "Tennessee State Statutes" for information about Tennessee's classification of its offenders and associated registration requirements):<sup>3</sup>

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<sup>2</sup> See Section IX of this report for more information about Tennessee's duration and frequency of appearance structure as it compares to SORNA.

<sup>3</sup> Tennessee will tier offenses from other jurisdictions (including foreign and military offenses) to the appropriate comparable Tennessee offense. If no comparable Tennessee offense exists, then Tennessee will register the offense and will classify the offender in its sexual offender category (See Section IX of this report for more information about Tennessee's duration and frequency of appearance structure).

Tennessee places the following current offenses in its scheme by which offenders are eligible for removal after ten years; SORNA requires 15-year registration (SORNA Tier I) for each:

- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-505 Sexual Battery (where the victim is an adult)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is a Class E felony)
- § 39-17-1003 Sexual Exploitation of a Minor
- § 18 U.S.C. 1801 Video Voyeurism of a Minor
- § 18 U.S.C. 2252 Receipt or Possession of Child Pornography.
- § 18 U.S.C. 2252A Receipt or Possession of Child Pornography
- § 18 U.S.C. 2252B Misleading Domain Name
- § 18 U.S.C. 2252C Misleading Words or Digital Images
- § 18 U.S.C. 2422(a) Coercion to Engage in Prostitution
- § 18 U.S.C. 2423(B) Travel with the Intent to Engage in Illicit Conduct
- § 18 U.S.C. 2423(C) Engaging in Illicit Conduct in Foreign Places
- § 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct
- § 18 U.S.C. 2424 Filing Factual Statement About Alien Individual

Tennessee places the following current offenses in its scheme by which offenders are eligible for removal after ten years; SORNA requires placement in a higher SORNA Tier for each:

- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
  - o This offense involves kidnapping of a minor, which is a Tier III offense under SORNA.
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
  - o This offense involves kidnapping of a minor, which is a Tier III offense under SORNA.
- § 39-13-505 Sexual Battery (where the victim is 13-17)
  - o This offense involves sexual contact with a victim 13-17, which is a Tier II offense under SORNA.
- § 39-13-506(a) Mitigated Statutory Rape (second conviction under this statute)
  - o This offense involves a sexual act with a victim who is 15, which is a Tier III offense under SORNA, and/or a second conviction for a non-forcible sexual

act with a victim who is 16-17, which because of SORNA's recidivism requirements is a Tier III offense under SORNA.

- § 39-13-506(b) Statutory Rape (second conviction under this statute)
  - o This offense involves a sexual act with a victim who is 13-15, which is a Tier III offense under SORNA, and/or a second conviction for a non-forcible sexual act with a victim who is 16-17, which because of SORNA's recidivism requirements is a Tier III offense under SORNA.
- § 39-13-506(c) Aggravated Statutory Rape (victim is 16 or 17)
  - o This offense involves a non-forcible sexual act with a victim who is 16-17, which is a Tier II offense under SORNA.
- § 39-13-506(c) Aggravated Statutory Rape (victim is 13-15)
  - o This offense involves a sexual act with a victim who is 13-15, which is a Tier III offense under SORNA.
- § 39-13-529 Soliciting Sexual Exploitation of a Minor
  - o This offense involves enticing a criminal sexual act, which is a Tier II offense under SORNA.

These deviations do not substantially disserve the purposes of the 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.

Tennessee does not collect information pertaining to the location where vehicles are kept.

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.

Tennessee 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.

Tennessee 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).

In its current statutory scheme, Tennessee does not correctly classify many of its former offenses in the appropriate categories for purposes of length of registration and frequency of appearances. Therefore, to the extent that Tennessee is recapturing any offenders who commit these offenses, Tennessee is not subjecting these offenders to the minimum registration requirements, in terms of length of registration and frequency of appearances, that SORNA requires.

Specifically, Tennessee places the following former offenses in its scheme by which offenders are eligible for removal after ten years; SORNA requires placement in SORNA Tier I or in a higher SORNA Tier for each:

- § 39-3704(A)(3)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989) (where the victim is an adult)
  - o This offense is a Tier I offense under SORNA.
- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 16-17 and the offender is more than four years older than the victim)
  - o This offense involves a non-forcible sexual act with a victim 16-17, which is a Tier II offense under SORNA.
- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 13-15 and the offender is more than four years older than the victim)

- This offense involves a sexual act with a victim under 16, which is a Tier III offense under SORNA.
- § 39-2-607 Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
  - This offense involves sexual contact with a victim 13-17, which is a Tier II offense under SORNA.
- § 39-2-608(a) Assault with Intent to Commit Rape (if the offender was convicted before 1989)
  - This offense involves a sexual act, which is a Tier III offense under SORNA.
- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
  - This offense involves sexual contact with a victim 13-17, which is a Tier II offense under SORNA.
- § 39-4-306 Incest (if the offender was convicted before 1989)
  - This offense involves a sexual act, which is a Tier III offense under SORNA.
- § 39-6-1137 Use of Minors for Obscene Purposes (if the offender was convicted before 1989)
  - This offense involves use of a minor in a sexual performance, which is a Tier II offense under SORNA.
- § 39-6-1138 Promotion of Performances Including Sexual Conduct by Children (if the offender was convicted before 1989)
  - This offense involves use of a minor in a sexual performance, which is a Tier II offense under SORNA.
- § 39-3703 Criminal Sexual Conduct – First Degree (if the offender was convicted before 1989)
  - This offense involves a sexual act, which is a Tier III offense under SORNA.
- § 39-3704(A)(1) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
  - This offense involves sexual contact with a victim under 13, which is a Tier III offense under SORNA.
- § 39-3704(A)(2)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
  - This offense involves sexual contact with a victim 13-17, which is a Tier II offense under SORNA.

- § 39-3705(A)(1) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989) (where the offender is more than four years older than the victim)
  - o This offense involves a sexual act with a victim 13-15, which is a Tier III offense under SORNA.
  
- § 39-3705(A)(2)-(4) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989)
  - o This offense involves a forcible sexual act, which is a Tier III offense under SORNA.

These deviations do not substantially disserve SORNA’s requirements.

### **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. 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, that the offender immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging 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, the offender 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 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.

Strictly speaking, Tennessee Code does not require an offender who lives in Tennessee to appear in-person to update name, school, and/or employment information. Tennessee Code also does not require an offender who only works and/or attends school in Tennessee to appear in-person to update name information. However, while it is not written in Tennessee Code or in procedure, all offenders are expected to appear in person to update all information, because they are expected to sign an Information Update form (an “update form,” which is generated any time

that any registration information is updated).<sup>4</sup> Specifically, the Tennessee Bureau of Investigation (TBI) trains all registry officials to request that offenders appear in person to sign the update form upon any change in information. TBI will not accept an unsigned update form: if a police department or sheriff's office submits to TBI an update form that has not been signed by the offender, TBI returns the form to the respective office, and requests that the form be signed.

This deviation does not substantially disserve the purposes of the 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.

### **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, that SORNA Tier II offenders register for 25 years, and that SORNA Tier III offenders register for life.

Tennessee allows offenders in the sexual offender category to petition for removal from the registry ten years after the expiration of any sentence. If the offender who has so petitioned has, in the judgment of TBI, substantially complied with his registration requirements and has not committed any new sex offenses<sup>5</sup>, he will be removed from the registry. If TBI determines that the offender has not met both of these criteria, the offender will remain on the registry, and cannot petition again for five years. If the offender never petitions for removal, he will remain on the registry for life.

This deviation 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.

Tennessee meets all of the SORNA requirements in this section.

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<sup>4</sup> According to the Tennessee Bureau of Investigation, most of the local registering agencies send in signed Information Updates showing that the offender has come in and signed the form acknowledging the change in information.

<sup>5</sup> Per Tennessee Code § 40-39-207(b), TBI will conduct a fingerprint-based state and federal criminal history check to determine whether the offender has committed any new sex offenses.

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

The process by which offenders in the sexual offender category can petition for removal is described above. Strictly speaking, Tennessee does not require offenders to avoid conviction for any offense for which imprisonment for more than one year may be imposed, nor does Tennessee require the successful (without revocation) completion of any periods of supervised release, probation, and parole, nor the successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. However, per Tennessee Code § 40-39-207(f), any failure of an offender to substantially comply with his registration requirements tolls the running of the offender's ten-year's registration period, regardless of whether a warrant or indictment has been sought for the offender for his violations. In addition, as mentioned above, an offender is not eligible to petition for removal until ten years after the expiration of his sentence.

As described earlier in this report, offenders who are required to register on the basis of a delinquency adjudication are required to register for life; however, once such an offender reaches the age of 25, the offender can petition the registry for removal, and if the offender has not been adjudicated delinquent for or convicted of any new sex offense, he will be removed from the registry. This process does not occur 25 years after the offender's placement on the registry, as SORNA requires, nor does it require the lack of conviction for any offense for which imprisonment for more than one year may be imposed; the successful (without revocation) completion of any periods of supervised release, probation, and parole; or the successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

These deviations 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.

Tennessee does not publish the name or address of any secondary school on its public registry website; however, per Tennessee Code § 49-6-3051, parents, guardians and/or legal custodians are required to notify their child's school when that child is adjudicated delinquent for any of the offenses for which SORNA requires juveniles to register.

In addition, Tennessee's only link to any safety or education resources is a link to NSOPW, and that link is not labeled as a safety or education resource. We encourage Tennessee to indicate that the link to NSOPW is a link to a safety and education resource and to provide additional links to such resources.

These deviations do not substantially disserve the purposes of the 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.

Tennessee's email notification system does not provide notifications for changes to secondary school information.

This deviation does not substantially disserve the purposes of the 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.

Tennessee 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.

Tennessee meets all of 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 in terms of investigating the abscondence and notifying various law enforcement agencies.

While Tennessee may notify the United States Marshals Service as to a particular case, in general Tennessee only notifies the United States Marshals Service of absconded offenders monthly.

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

### **Conclusion**

Tennessee has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for Tennessee to fully implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.

## **Appendix: Tennessee State Statutes**

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

In reviewing Tennessee Code, the SMART Office understands that Tennessee has two categories of registrants for purposes of its duration of registration and frequency of registration requirements:

Sexual offenders, who are eligible to come off the registry after ten years plus the length of their sentence, and who are required appear annually to verify registration information (hereinafter called the "sexual offender" category).

Violent sexual offenders, who are required to register for life and appear quarterly to verify registration information (hereinafter called the "violent sexual offender" category).

### **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 Tennessee Code would require, at a minimum, Tier I registration requirements under SORNA.

- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is an adult)
- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-505 Sexual Battery (where the victim is an adult)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is an adult)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is a Class E felony)
- § 39-17-1003 Sexual Exploitation of a Minor
- § 39-3704(A)(3)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989) (where the victim is an adult)
- § 18 U.S.C. 1801 Video Voyeurism of a Minor
- § 18 U.S.C. 2252 Receipt or Possession of Child Pornography
- § 18 U.S.C. 2252A Receipt or Possession of Child Pornography
- § 18 U.S.C. 2252B Misleading Domain Name
- § 18 U.S.C. 2252C Misleading Words or Digital Images
- § 18 U.S.C. 2422(a) Coercion to Engage in Prostitution
- § 18 U.S.C. 2423(B) Travel with the Intent to Engage in Illicit Conduct

- § 18 U.S.C. 2423(C) Engaging in Illicit Conduct in Foreign Places
- § 18 U.S.C. 2424 Filing Factual Statement About Alien Individual
- § 18 U.S.C. 2425 Transmitting Information About a Minor to Further Criminal Sexual Conduct

## **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 Tennessee Code would require, at a minimum, Tier II registration requirements under SORNA.

- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 16-17 and the offender is more than four years older than the victim)
- § 39-2-607 Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is 13-17)
- § 39-6-1137 Use of Minors for Obscene Purposes (if the offender was convicted before 1989)
- § 39-6-1138 Promotion of Performances Including Sexual Conduct by Children (if the offender was convicted before 1989)
- § 39-13-309 Trafficking for Sexual Servitude
- § 39-13-504 Aggravated Sexual Battery (where the victim is 13-17)
- § 39-13-505 Sexual Battery (where the victim is 13-17)
- § 39-13-506(c) Aggravated Statutory Rape (where the victim is 16 or 17)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is 13-17)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is not a Class E felony)
- § 39-13-529 Soliciting Sexual Exploitation of a Minor
- § 39-17-1004 Aggravated Sexual Exploitation of a Minor
- § 39-17-1005 Especially Aggravated Sexual Exploitation of a Minor
- § 39-3704(A)(2) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
- § 39-3704(A)(3)-(5) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989) (where the victim is 13-17)
- § 18 U.S.C. 1591 Sex Trafficking by Force, Fraud or Coercion
- § 18 U.S.C. 2243 Sexual Abuse of a Minor
- § 18 U.S.C. 2244 Abusive Sexual Contact (where the victim is 13-17)
- § 18 U.S.C. 2251 Sexual Exploitation of Children
- § 18 U.S.C. 2251A Selling or Buying of Children
- § 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)
- § 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States
- § 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity

- § 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity

### **SORNA Tier III Offenses**

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

- § 39-2-603 Aggravated Rape (repealed)
- § 39-2-604 Rape (repealed)
- § 39-2-605 Statutory Rape (if the offender was convicted before 1989) (where the victim is 13-15 and the offender is more than four years older than the victim)
- § 39-2-606 Aggravated Sexual Battery (repealed)
- § 39-2-607 Sexual Battery (if the offender was convicted before 1989) (where the victim is under 13)
- § 39-2-608(a) Assault with Intent to Commit Rape (if the offender was convicted before 1989)
- § 39-2-608 Attempt to Commit Rape (if the offender was convicted before 1989)
- § 39-2-608(b) Assault with Intent to Commit Sexual Battery (if the offender was convicted before 1989) (where the victim is under 13)
- § 39-13-302 False Imprisonment (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-303 Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-304 Aggravated Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-13-305 Especially Aggravated Kidnapping (where the victim is a minor) (where the offense involves the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
- § 39-4-306 Incest (if the offender was convicted before 1989)
- § 39-13-502 Aggravated Rape
- § 39-13-503 Rape
- § 39-13-504 Aggravated Sexual Battery (where the victim is under 13)
- § 39-13-506(a) Mitigated Statutory Rape (second conviction under this statute)
- § 39-13-506(b) Statutory Rape (second conviction under this statute)
- § 39-13-506(c) Aggravated Statutory Rape (where the victim is 13-15)
- § 39-13-507(b)(1) Spousal Rape (repealed)
- § 39-13-507(c)(1) Aggravated Spousal Rape (repealed)
- § 39-13-522 Rape of a Child
- § 39-13-531 Aggravated Rape of a Child
- § 39-13-532 Statutory Rape by an Authority Figure
- § 39-15-302 Incest
- § 39-3703 Criminal Sexual Conduct – First Degree (if the offender was convicted before 1989)

- § 39-3704(A)(1) Criminal Sexual Conduct – Second Degree (if the offender was convicted before 1989)
- § 39-3705(A)(1) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989) (where the offender is more than four years older than the victim)
- § 39-3705(A)(2)-(4) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989)
- § 18 U.S.C. 2241 Aggravated Sexual Abuse
- § 18 U.S.C. 2242 Sexual Abuse
- § 18 U.S.C. 2243 Sexual Abuse of a Minor or Ward
- § 18 U.S.C. 2244 Abusive Sexual Contact (where the victim is under 13)

### **Further Review**

In reviewing the statutes that Tennessee cited as those that are registerable offenses under Tennessee’s registration scheme, the SMART office did notice that there are several offenses missing from those statutes for which SORNA requires registration. Those offenses include:

- § 39-13-506(a) Mitigated Statutory Rape (first conviction)<sup>6</sup>
- § 39-13-506(b) Statutory Rape (first conviction)

In addition, Tennessee registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- § 39-13-511 Indecent Exposure
- § 39-13-109 Criminal Exposure to HIV
- § 39-13-516 Aggravated Prostitution (both if brought Currently and as constituted before 7/1/10)
- § 39-3705(A)(1) Criminal Sexual Conduct – Third Degree (if the offender was convicted before 1989) (where the offender is between three and four years older than the victim)

Finally, while Tennessee places the following current offenses in its lifetime registration scheme, SORNA only requires placement in a lower SORNA Tier for each:

- § 39-13-304 Aggravated Kidnapping (where the offense does not involve the kidnapping of the minor (as defined by § 18 U.S.C. 1201))
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<sup>6</sup> According to Pam Beck, Legal Advisor to the Tennessee Bureau of Investigation, judges may and often do exercise their discretion to place an individual who is convicted of Mitigated Statutory Rape or Statutory Rape on the registry, even if the conviction is the offender’s first conviction.

- § 39-13-309 Trafficking for Sexual Servitude
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is an adult)
- § 39-13-504 Aggravated Sexual Battery (where the victim is 13-17)
- § 39-13-527(1) Sexual Battery by an Authority Figure (where the victim is 13-17)
- § 39-13-528 Solicitation of a Minor (where the offense solicited is not a Class E felony)
- § 39-17-1004 Aggravated Sexual Exploitation of a Minor
- § 39-17-1005 Especially Aggravated Sexual Exploitation of a Minor
- § 18 U.S.C. 1591 Sex Trafficking by Force, Fraud or Coercion
- § 18 U.S.C. 2243 Sexual Abuse of a Minor
- § 18 U.S.C. 2244 Abusive Sexual Contact (victim 13-17)
- § 18 U.S.C. 2251 Sexual Exploitation of Children
- § 18 U.S.C. 2251A Selling or Buying of Children
- § 18 U.S.C. 2252A Certain Activities Relating to Material Constituting or Containing Child Pornography (not possession or receipt of child pornography)
- § 18 U.S.C. 2260 Production of Sexually Explicit Depictions of a Minor for Importation into the United States
- § 18 U.S.C. 2421 Transportation of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2422 Coercion and Enticement of a Minor for Illegal Sexual Activity
- § 18 U.S.C. 2423(A) Transportation of Minors for Illegal Sexual Activity