



October 2017

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

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 Texas 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 Texas' SORNA substantial implementation package and has found Texas to have not substantially implemented SORNA.

On June 27, 2017, the Texas Governor's Office and Department of Public Safety (DPS) submitted to the SMART Office an official substantial implementation package that included a completed Substantial Implementation Checklist-Revised, current Texas statutes and administrative rules regarding sex offender registration, registration forms, all Texas criminal offenses that require registration, an offense tiering comparison chart and other relevant materials related to its registration and notification system.

Our review of the submitted 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 Texas meets or does not meet 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 substantially disserves the purpose of that requirement. In other words, Texas is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

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 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 National Sex Offender Registry (NCIC/NSOR) and the jurisdiction's public sex offender registry website.

Texas meets all of 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.

Texas requires registration when any person is convicted of a listed sex offense, or a conviction for an offense of the law of another state, District of Columbia, federal, military or foreign country which is a "substantially similar" offense. Additionally, Texas requires registration as an "extra jurisdictional registrant" when a person has been convicted under the laws of another state, federal law or the Uniform Code of Military Justice, or the laws of a foreign country.<sup>1</sup>

However, Texas does not require individuals to register whose offenses in other jurisdictions result in deferred adjudications.

### A. Texas Offenses

Texas captures many of the offenses for which SORNA requires registration. However, the following Texas offenses are not included in Texas' registration law:

§ 21.07. Public lewdness (if the offender is an adult and the victim is under 18)

§ 21.12. Improper relationship between educator and student (if the offender is an adult and the victim is under 18)

§ 21.15. Improper photography or visual recording (if the offender is an adult and the victim is under 18; equivalent to 18 U.S.C. §1801, video voyeurism of a minor)

Additionally, Texas allows for certain young adult sex offenders to ask a court for an exemption from sex offender registration. The provision applies to individuals under the age of 19 at the time of offense whose offenses involve consensual sexual conduct and the victim was over the age of 13.<sup>2</sup>

### B. Federal Offenses

Texas requires any person to register as a sex offender if convicted under federal law.

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<sup>1</sup> Texas Code of Criminal Procedure, §62.001(10), defines these as "extra jurisdictional registrant[s]." The duty to register for an extra jurisdictional registrant expires on the date the person's duty to register would expire under the laws of the other state or foreign country had the person remained in that state or foreign country, under federal law or under the Uniform Code of Military Justice, as applicable.

<sup>2</sup> These are mostly offenses to which the "Romeo and Juliet" exception in 42 U.S.C. §16911(5) (c) will apply, when appropriate.

C. Military Offenses

Texas requires any person to register as a sex offender if convicted under the Uniform Code of Military Justice.

D. Foreign Offenses

Texas requires any person to register as a sex offender if convicted under the laws of a foreign country.

E. Juveniles

Texas requires a juvenile adjudicated delinquent for an applicable sex offense, regardless of the juvenile's age (even under the age of 14), to register. However, certain juveniles may be exempted from registration.

During or after the disposition of a case in which a juvenile has been adjudicated delinquent for a registerable sex offense, the court may conduct a hearing to determine whether the interests of the public require a juvenile to register. The hearing can only be held if, prior to the hearing, the attorney for the juvenile has filed a motion asking the court to consider exemption from registration. These hearings do not involve a jury and the burden of proof is on the juvenile to show by a preponderance of evidence that the protection of the public would not be increased by the registration or that any potential increase in protection of the public resulting from registration of the juvenile is clearly outweighed by the potential harm to the juvenile and the juvenile's family.

After the hearing, the court can make one of several rulings:

- 1) require the juvenile to register as a sex offender;
- 2) defer the decision on registration until after the juvenile has completed treatment;
- 3) require the juvenile to register as a sex offender but provide that the registration information is not public information; or
- 4) if the court determines that the juvenile has met the burden of proof, exempt the juvenile from the duty to register.

If the juvenile is ordered to complete treatment, the court retains discretion to require or excuse registration at any time during the treatment or on its successful or unsuccessful completion. During the period of deferral, registration may not be required. Following successful completion of treatment, registration is excused unless a hearing is held on motion of the state, and the court determines the interests of the public require registration.

In any of the above circumstances, a juvenile court judge still has the authority to require full registration, including publication of the juvenile's name and photograph on the Internet, although information about a juvenile registrant may not be published in a newspaper.

The above deviations do not substantially disserve the purposes of 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. Texas' current registration and notification scheme requires sex offenders to either register for 10 years or for life (see section IX of this report for further information about reporting requirements). For clarification purposes, the SMART Office has reviewed all statutes identified in Texas' registration and notification scheme and has placed these statutes within the three SORNA three tier levels (see attached Appendix: Texas Offense Tiering Review for a detailed analysis regarding this subsection of the review). Texas' offense tiering structure deviates from SORNA requirements.

The following Texas offenses require 10-year registration with annual in-person verification; to meet SORNA requirements, these offenses would, at minimum require 15-year registration with annual in-person verification:

- § 20.02. Unlawful restraint (nonparental, victim under 17)
- § 21.11(a) (2). Indecency with a child
- § 43.26. Possession child pornography (attempts or conspiracies)

The following Texas offenses presently require 10-year registration with annual in-person verification; to meet SORNA requirements, these offenses would, at minimum require 25-year registration with twice yearly in-person verification:

- § 33.021(c). Online solicitation of a minor
- § 20A.02 (a) (3, 4, 7, 8). Trafficking of persons (attempts or conspiracies)
- § 21.02. Continuous sexual abuse of young child or children (attempts or conspiracies, victim age 13-17)
- § 21.11(a) (1). Indecency with a child (attempts or conspiracies, victim age 13-17)
- § 43.05(a) (2). Compelling prostitution (attempts or conspiracies, victim under 18)
- § 43.25. Sexual performance by a child (attempts or conspiracies)
- § 43.26. Promoting child pornography (attempts or conspiracies)

The following Texas offenses presently require 10-year registration with annual in-person verification; to meet SORNA requirements, these offenses would, at minimum require lifetime registration with quarterly in-person verification:

- § 20.03. Kidnapping (nonparental, victim under 17)
- § 20.04. Aggravated kidnapping (nonparental, victim under 17)
- § 21.02. Continuous sexual abuse of young child or children (attempts or conspiracies, victim under 13)
- § 21.11(a) (1). Indecency with a child (attempts or conspiracies, victim under 13)
- § 22.011. Sexual assault<sup>3</sup> (attempts or conspiracies)
- § 22.021. Aggravated sexual assault (attempts or conspiracies)
- § 25.02. Prohibited sexual conduct (attempts or conspiracies)

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<sup>3</sup> These are the offenses to which the "Romeo and Juliet" exception in 42 U.S.C. §16911(5) (c) will apply, when appropriate.

§ 30.02(d). Burglary of a habitation with intent to commit a prohibited sex act (attempts or conspiracies)

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. Texas deviates from SORNA requirements in that law enforcement does not collect and keep the following information in its registry:

- Criminal history information: date of all arrests, outstanding arrest warrants
- Palm prints (collection and submission)
- Passports and immigration documents
- Photographs (taken only once per year)
- Temporary lodging information: dates of travel
- Text of the registration offense
- Vehicle information: aircraft, watercraft and permanent or frequent location where all vehicles are kept.

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.

Texas meets all of the SORNA requirements in this section.

#### **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.

Texas meets some of the requirements of this section; however, offenders are notified by releasing authorities of the duty to register within seven days after release and offenders convicted in other jurisdictions are required to report to registering authorities within seven days of entering the state, rather than three as SORNA requires.

Texas does not meet 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).

Texas' registration scheme applies to individuals convicted or adjudicated on or after September 1, 1970, of a registerable sex offense; offenders convicted prior to that date are not subject to registration in the state.

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

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

SORNA requires that when an offender resides in a jurisdiction, that 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, that 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 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, 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 (USMS), and immediately update NCIC/NSOR.

Texas' statutes and policies meet some of the SORNA requirements in this section, with notable exceptions. While registered sex offenders in Texas are required to report changes in residence in person, they are not required to report changes in name, temporary domicile, employment and school attendance in person. Furthermore, offenders are required to report to registering authorities these changes within seven days, rather than three as SORNA requires.

Additionally, Texas does not require an offender who works in another jurisdiction, but resides in Texas, to immediately appear in person to update employment-related information, nor do they require an offender who attends school in another jurisdiction, but resides in Texas, to immediately appear in person to update school-related information. Texas does not require registered sex offenders to provide 21 days' advance notice when an offender indicates intention to relocate or travel to another country; however, the USMS is notified of intended international travel.

Because Texas does not require immediate in-person updating of required information and does not require 21 days' advance notice of an offender's intent to relocate or travel to another country, Texas does not meet the SORNA requirements of 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 a minimum duration of 15 years for all Tier I offenses and a one-year interval for in-person registration verification, 25 years for all Tier II offenses and a six-month interval for in-person registration verification, and lifetime registration for all Tier III offenses and a 90-day interval for in-person registration verification.

### **A. Frequency of Verification/Appearance**

In Texas, a person subject to registration who has been convicted of a sexually violent offense two or more times, received an order of deferred adjudication two or more times or been convicted and received an order of deferred adjudication is required to report to law enforcement every 90 days to update and verify his/her registration information. All other registered sex offenders are required to report annually. Additionally, at any time a registering agency may mail a verification form to a registrant and upon receipt of the form, the registrant is required to complete and return the form to the registering agency within 21 days after receipt.

### **B. Duration of Registration Requirement**

In Texas, adult registered sex offenders are either subject to 10-year or lifetime registration. Juveniles required to register based on an adjudicated for a registerable sex offense must register until the 10<sup>th</sup> anniversary of the date on which the disposition in their case was

made or the juvenile completes the terms of the disposition, whichever date is later. Juvenile sex offenders tried and convicted as adults must register for 10 years.

### C. Reduction of Registration Periods

The Texas DPS must regularly determine the required registration periods under federal law for each registerable conviction or adjudication in the state (Texas Code of Criminal Procedure 62.402). After determining the minimum required registration period, Texas compiles and provides to registered sex offenders a list of reportable convictions or adjudications for which a person must register for a period that exceeds the minimum required registration period under federal law. Individuals whose registration periods exceed the minimum federal registration period may request with the trial court a risk assessment and file a motion for early termination of the registration obligation.

Because Texas does not provide for registration appearances/verifications in accordance with SORNA requirements, Texas does not meet 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. Texas' public registry website requirements deviate from SORNA requirements in that the public registry website does not display the following information required by SORNA:

- Criminal history
- Employer information
- Vehicle(s) information, including license plate number(s) and vehicle description(s)
- Links to sex offender safety resources

Texas 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. Texas' community notification scheme deviates from SORNA requirements.

While Texas provides members of the public automated notification about registrants, Texas does not notify law enforcement in each jurisdiction where an offender resides, works or goes to school of changes to registration information. The Texas DPS notes in its substantial implementation package submitted to the SMART Office that this functionality is currently under development. Texas is expected to inform the SMART Office when this functionality is in place.



These deviations do not substantially disserve the purposes of 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.

Texas 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.

Texas has not adopted procedures in statute or policy to notify the originating jurisdiction that an offender has failed to appear for registration.

Texas 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.

Texas has not adopted official procedures in statute or policy to investigate an absconding sex offender. However, local law enforcement agencies are trained to investigate these cases and pursue warrants and work with USMS in the investigations of failure to register cases. Additionally, DPS has informed the SMART Office that it does post non-compliant wanted sex offenders on the public registry website. Texas also updates NCIC/NSOR to reflect an offender's absconder status and the offender is entered into the NCIC Wanted Person File.

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

## **XV. Tribal Considerations**

There are three Indian tribes that have land within the borders of Texas. Two have chosen to delegate their sex offender registration and notification responsibilities to the state, the Ysleta Del Sur Pueblo and Kickapoo Traditional Tribe of Texas, and one has retained its authority to substantially implement SORNA, the Alabama-Coushatta Tribe of Texas.

The Ysleta Del Sur Pueblo has entered into a memorandum of understanding (MOU) with the El Paso County Sheriff's Office for all registration and notification responsibilities. The Ysleta Del Sur Pueblo police, county sheriff and Texas Department of Public Safety have a strong working relationship and work in tandem to monitor and track sex offenders located on the pueblo's land.

The Kickapoo Traditional Tribe of Texas has not developed an official MOU with the Maverick County Sheriff's Office. They have a verbal agreement that appears to be working at this time. Any member of the tribe who is required to register as a sex offender is sent to the Maverick County Sheriff's Office to complete the registration process. Like the Ysleta Del Sur Pueblo, the Kickapoo tribal police have a strong working relationship with the Maverick County Sheriff's office and Texas Department of Public Safety.

The Alabama-Coushatta Tribe of Texas substantially implemented SORNA in September 2016. While the Alabama-Coushatta Tribe of Texas relies on the Bureau of Indian Affairs to administer other programs pursuant to a PL-638 contract, the tribe maintains its own police department. The Alabama-Coushatta Tribe of Texas sex offender registrar collects fingerprints and palm prints with the assistance of San Jacinto County. The county agrees to submit finger and palm prints through the state of Texas Crime Information Center system for entry into FBI's Next Generation Identification database. Additionally, San Jacinto County submits NCIC/NSOR information and updates on behalf of the Alabama-Coushatta Tribe of Texas. The county has agreed to provide these services to the Alabama-Coushatta Tribe of Texas pursuant to an MOU.

As the SMART Office continues to work with Texas on SORNA implementation, we will notify the SORNA tribe within the state of any processes, policies, or procedures that facilitate the sharing of criminal justice information.

## **Conclusion**

We appreciate the effort that Texas has put forth in submitting this substantial implementation package and in enhancing its sex offender registration and notification system to better conform to SORNA requirements. However, there are a number of provisions identified in this review that should be addressed in order for Texas to substantially implement SORNA.

## **Appendix: Texas Offense Tiering Review**

The SMART Office has reviewed all Texas statutes identified in its substantial implementation package and has identified Texas' 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). It should be noted that SORNA requires all attempts, conspiracies and solicitations to mirror requirements of the actual offense. 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 Texas. It is possible that other offenses will need to be included in Texas' sex offender registry to substantially implement SORNA.

In reviewing Texas Code of Criminal Procedure, the SMART Office understands that Texas has essentially three categories of registrants:

- 1) 10-year registrants, who are required to report to local law enforcement each year to verify registration information
- 2) Lifetime registrants, who are required to report to local law enforcement each year to verify registration information
- 3) Lifetime registrants (convicted two or more times of a sexually violent offense, received an order of deferred adjudication two or more times or been convicted and received an order of deferred adjudication), who are required to report to law enforcement every 90 days to update and verify registration information

### **Tier I Offenses**

SORNA requires a minimum duration of 15 years for all Tier I offenses and a one-year interval for in-person registration verification. In order to meet these minimum requirements, Texas must ensure that the registration duration is 15 years for state offenses equivalent to Tier I offense under SORNA, as well as continue to require annual in-person verification of registration information.

- § 20.02. Unlawful restraint and victim is under 17 (nonparental unlawful restraint is a Tier I offense Under SORNA; if committed by a parent, SORNA does not require registration)
- § 21.07. Public lewdness (if the offender is an adult and the victim is under 18)
- § 21.11(a) (2). Indecency with a child, exposure
- § 21.15. Improper photography or visual recording(if the offender is an adult and the victim is under 18; equivalent to 18 U.S.C. §1801, video voyeurism of a minor)
- § 43.26(a). Possession of child pornography

### **Tier II Offenses**

SORNA requires a minimum duration of 25 years for all Tier II offenses and a six-month interval for in-person registration verification. Texas currently does not utilize this tier in their registration scheme. However, the following offense listed in Texas Penal Code would require, at minimum, Tier II registration requirements:

- § 20A.02. Trafficking of persons (if the offender is an adult and the victim is under 18)
- § 21.11(a) (1). Indecency with a child, contact (if victim age 13-17)
- § 21.12. Improper relationship between educator and student (if the offender is an adult and the victim is under 18)
- § 43.05(a) (2). Compelling prostitution and victim is under 17
- § 43.23(h). Obscenity (if the offender is an adult and the victim is under 18, and the subject of the offense is visually depicted in activities described by Section 43.21(a)(1)(B))
- § 43.25. Sexual performance by a child
- § 43.26(e). Promotion of child pornography

### **Tier III Offenses**

SORNA requires lifetime registration for all Tier III offenses and a 90-day interval for in-person registration verification.

- § 20.03. Kidnapping (nonparental and victim is under 17)
- § 20.04. Aggravated kidnapping (nonparental and victim is under 17)
- § 20.04(a) (4). Aggravated kidnapping with intent to violate or abuse victim sexually
- § 21.02. Continuous sexual abuse of young child or children
- § 21.11(a) (1). Indecency with a child, contact
- § 21.12. Improper relationship between educator and student (if the offender is an adult and the victim is under 13)
- § 22.011. Sexual assault
- § 22.021. Aggravated sexual assault
- § 25.02. Prohibited sexual conduct
- § 30.02. Burglary of a habitation with intent to commit a prohibited sex act

### **Further Review**

In reviewing the statutes that Texas cited as those that are registerable offenses under Texas' registration scheme, the SMART Office did notice offenses that do not require registration under SORNA:

- § 20.02. Unlawful restraint (if committed by a parent)
- § 20.03. Kidnapping (if committed by a parent)
- § 20.04. Aggravated kidnapping (if committed by a parent)
- § 21.08. Indecent exposure (two or more convictions)
- § 43.05(a) (1). Compelling prostitution