



December 2017

SORNA Substantial Implementation Review Tonawanda Seneca Nation

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 Tonawanda Seneca Nation 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 found that the Tonawanda Seneca Nation has not substantially implemented SORNA.

If the SMART Office determines a tribal jurisdiction has not substantially implemented SORNA, the duties and responsibilities of registration and notification are delegated to the state in which the nation is located. However, although the Tonawanda Seneca Nation has not substantially implemented the SORNA requirements, the SMART Office is not delegating the Tonawanda Seneca Nation's sex offender responsibilities at this time.

The Tonawanda Seneca Nation has entered into a memorandum of agreement (MOA) with the Genesee County Sheriff's Office and Erie County Sheriff's Office wherein the nation assigns its sex offender registration and notification responsibilities to the Genesee County Sheriff's Office and Erie County Sheriff's Office in New York. New York has not yet substantially implemented SORNA. Therefore, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation.

On September 13, 2017, the Tonawanda Seneca Nation submitted to the SMART Office its MOA with the Genesee County Sheriff's Office and Erie County Sheriff's Office regarding sex offender registration, information sharing and community notification. Additionally, SMART Office and the Office of Justice Programs' Office of General Counsel officials traveled to Tonawanda Seneca Nation on May 9, 2017, and met with representatives from the Tonawanda Seneca Nation, including Tonawanda Seneca Nation Clan Mothers and the Tonawanda Seneca Nation Council of Chiefs, as well as the Genesee County Sheriff's Office and Erie County Sheriff's Office, and the U.S. Attorney's Office. This in-person meeting, as well as email and phone correspondence with the Tonawanda Seneca Nation, 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 Tonawanda Seneca Nation meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify whether the departure(s) from a particular requirement does not meet SORNA requirements or whether the departure(s) does not substantially disserve the purpose of that requirement.

Based on our review of materials submitted by the Tonawanda Seneca Nation, we understand that the Tonawanda Seneca Nation has entered into an MOA with the Genesee and Erie county sheriff's offices wherein the nation assigns its sex offender registration and notification responsibilities to the Genesee and Erie county sheriff's offices in New York. Therefore, the Tonawanda Seneca Nation's deviations from SORNA requirements mirror New York's deviations.

The Tonawanda Seneca Nation is encouraged to focus on the deviations that substantially disserve SORNA's requirements and to work toward rectifying those deviations in order to achieve substantial implementation of SORNA. While not necessary for substantial implementation purposes, the SMART Office encourages the Tonawanda Seneca Nation to work toward rectifying the deviations that do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA.

This report is a comprehensive review and details significant areas in which the Tonawanda Seneca Nation has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the nation and get back in touch with us to develop a strategy to address these issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his or her information in a jurisdiction, that the initial registration information or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to the National Crime Information Center (NCIC)/National Sex Offender Registry (NSOR) and the jurisdiction's public sex offender registry website.

New York does not provide notification about registration updates to law enforcement agencies outside of the state and does not notify New York state agencies within the timeframe prescribed by SORNA. (See attached "SORNA Substantial Implementation Review: State of New York [May 2015]" for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff's offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation does not meet the SORNA requirements in this section.

II. Offenses That Must Be Included in the Registry

SORNA requires that certain federal, military and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

New York does not register juveniles adjudicated delinquent of serious sex offenses. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this area, the Tonawanda Seneca Nation 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. However, New York’s sex offender registration scheme is based on a risk assessment classification system, which does not meet SORNA requirements. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this area, the Tonawanda Seneca Nation does not meet 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.

New York does not meet the SORNA requirements in this section as it fails to capture much of the required information, including palm prints, DNA samples from all offenders, employment information from all offenders, temporary lodging information, vehicle location, photocopies of driver’s licenses and IDs, phone numbers, professional licensing information and criminal history of offenders. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this area, the Tonawanda Seneca Nation does not meet 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.

New York does not automatically require offenders who work or go to school but do not reside in the state to register, which does not meet the SORNA requirements in this section. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation does not meet 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 or her registration duties and require the offender to acknowledge in writing that he understands those duties.

New York does not immediately (i.e., within three days) register sex offenders who move to New York from other jurisdictions outside the state, which does not meet the SORNA requirements in this section. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation 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).

Pursuant to the MOA, sex offenders living or working on Tonawanda Seneca Nation lands are subject to the provisions of state law.¹ However, New York has had its registration

¹ There are no schools on nation lands. The MOA therefore does not cover offenders required to register on the basis of attending school.

system in place since 1996, and only registers offenders who have been sentenced since January 21, 1996 (or were incarcerated, on parole or on probation for a sex offense on that date). (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

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

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, he or she must immediately appear in person to update his or her name, residence, employment, school attendance and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, he or she must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information and temporary lodging information.

When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction and intends to travel outside the United States, he or she must notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his or her intent to relocate to another country to live, work or attend school, that the jurisdiction do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service; and immediately update NCIC/NSOR.

New York does not notify the United States Marshals Service or NCIC/NSOR of an offender’s international travel and does not require offenders to report changes to certain registration information immediately (i.e., within three days), which does not meet the SORNA requirements in this section. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation does not meet the SORNA requirements in this section.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction. SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA tier I offenders register for 15 years, SORNA tier II offenders register for 25 years and SORNA tier III offenders register for life.

SORNA also requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA tier I offenders appear once a year, that SORNA tier II offenders appear every six months and that SORNA tier III offenders appear every three months.

Pursuant to the MOA, sex offenders living or working on the lands of the Tonawanda Seneca Nation are subject to the provisions of New York law.

A. Duration of Registration

New York requires that sex offenders designated by the sentencing court as sexual predators, sexually violent offenders or predicate sex offenders, or classified as level 2 or level 3 offenders register for life. All other offenders, including level 1 offenders, register for 20 years from the date of initial registration. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this subsection.)

New York does not meet the SORNA requirements in this subsection.

B. Frequency of Registration

New York requires registered sex offenders to verify registration information on an annual basis by completing and mailing an annual verification form. In addition, any offender who has been designated a level 3 or a sexual predator must also verify his or her address in-person every 90 days with local law enforcement. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this subsection.)

New York does not meet the SORNA requirements in this subsection.

C. Reduction of Registration Period

New York permits an offender designated as level 2 and who has not been designated a sexual predator, sexually violent offender or predicate offender to petition to have his or her period of registration reduced to 30 years. The offender must prove by clear and convincing evidence that his or her risk of repeat offense and threat to public safety is such that registration is no longer necessary. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this subsection.)

New York does not meet the SORNA requirements in this subsection.

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff's offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation does not meet the SORNA requirements in this section.

X. Public Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

Pursuant to the MOA, the Tonawanda Seneca Nation's registered sex offender data are posted on New York's public sex offender registry website. However, New York does not meet the SORNA requirements of this section because only offenders designated as level 2 and level 3 are posted on the public sex offender registry website. (See attached "SORNA Substantial Implementation Review: State of New York [May 2015]" for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff's offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation 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 Tonawanda Seneca Nation has an MOA with the Genesee County Sheriff's Office and Erie County Sheriff's Office to provide community notification for the nation. The Genesee and Erie county sheriff's offices will inform the Tonawanda Seneca Nation of sex offenders who have indicated that they reside or work on nation lands and the Tonawanda Seneca Nation will in turn notify the community of this information. The Genesee County Sheriff's Office and Erie County Sheriff's Office may also notify nation members about the presence of level 1, 2 or 3 offenders on nation lands via direct mailings. New York has also implemented an email notification system as part of its public sex offender registry website that allows anyone to sign up to receive alerts whenever a level 2 or 3 sex offender listed on the public sex offender registry website moves into or out of the community. (See attached "SORNA Substantial Implementation Review: State of New York [May 2015]" for a detailed analysis regarding this section.)

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

XII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

New York does not notify the originating jurisdiction of the appearance or non-appearance of an offender for registration in New York, which does not meet the SORNA requirements in this section. (See attached “SORNA Substantial Implementation Review: State of New York [May 2015]” for a detailed analysis regarding this section.)

Because the Tonawanda Seneca Nation has chosen to meet its SORNA obligations through an MOA with the Genesee and Erie county sheriff’s offices, and New York does not meet SORNA requirements in this section, the Tonawanda Seneca Nation does not meet 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.

Pursuant to the MOA, sex offenders living or working on the lands of the Tonawanda Seneca Nation are subject to the provisions of New York law. In New York, the law enforcement agency with last known jurisdiction over the offender is notified automatically if the annual verification form is returned as undeliverable. If the law enforcement agency informs the jurisdiction’s registry staff that the offender is no longer at that last known address, the registry lists the address as “Unknown,” NCIC/NSOR is updated that day to post the address as “Unknown” and the law enforcement agency issues a warrant for the offender’s arrest (if the offender is on probation or parole, the respective agency will issue a warrant). The registry notifies the U.S. Marshals Service. The New York registry does not have access to the NCIC Wanted Person File.

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

XIV. Other Considerations

There are no additional considerations.

Conclusion

The Tonawanda Seneca Nation has chosen to implement its program via an MOA with the Genesee County Sheriff's Office and Erie County Sheriff's Office, assigning nearly all of its SORNA responsibilities, for the time being, to New York. Thus, consistent with the New York finding, the Tonawanda Seneca Nation has been found to have not substantially implemented SORNA for reasons cited throughout this review.

Although the Tonawanda Seneca Nation has not substantially implemented the SORNA requirements, the SMART Office is not delegating the nation's sex offender registration and notification responsibilities to New York. The nation has a functioning system through an MOA and, at this time, the SMART Office finds that delegation would not lead to greater SORNA implementation. However, the SMART Office findings regarding substantial implementation are ongoing. Thus, any changes by either New York or the Tonawanda Seneca Nation to the sex offender registration and notification program will require a subsequent review by the SMART Office.

We encourage the Tonawanda Seneca Nation to contact the SMART Office with any questions or concerns regarding this finding, and to work toward meeting the provisions detailed in the review that do not meet the SORNA requirements in order to achieve substantial implementation of SORNA in the future.