



March 20, 2014

Revised and Updated Report SORNA Implementation Review State of Utah

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 Utah 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 Utah's SORNA substantial implementation packet and has found the State of Utah has not substantially implemented SORNA.

To conduct this substantial implementation review we have accessed or been provided with the relevant Utah statutes (including SB 159, passed in March of 2011), Utah's Public Sex Offender Registry Website, and a completed Substantial Implementation Checklist with Attachments. Additional information has been received via phone calls and email correspondence.

Our review of these 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 Utah 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.

Utah 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. To achieve full implementation of SORNA, Utah should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

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 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.

Utah 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.

Utah's statute requires registration for any offender convicted of a qualifying sex offense in Utah's courts or in "another jurisdiction [where the offense] is substantially equivalent to the offenses [requiring registration in Utah]." Utah Code Ann. § 77-27-21.5(1)(g)(ii) & (n)(ii). Utah properly captures completed offenses, attempts and conspiracies, and also includes solicitation convictions in its registration scheme.

In addition, Utah registers all "substantially equivalent" offenses from any state, Indian Country, U.S. Territory, federal court, or military court, as well as any person ordered to be registered by any court. This is designed to cover all of the required convictions under SORNA.

However, there are a number of areas which do not conform to SORNA's standards.

A. Utah Convictions. There are two Utah criminal offenses that require registration in addition to those already captured:

1. Utah Code Ann. § 76-5-413 Custodial Sexual Misconduct; will be a Tier II or Tier III offense under SORNA depending on the exact subsection under which an offender is convicted
2. Utah Code Ann. § 76-9-702(3) Sexual Battery; will be a Tier I offense under SORNA for a first conviction, and a Tier II offense for a second conviction.

B. Foreign Convictions. In 2011 Utah added a provision which requires registration for any "substantially equivalent" conviction from Canada, the United Kingdom, Australia, or New Zealand, but not any other foreign country. This provision will also require registration if a person is ordered to register by a court in those countries, even if the offense is not "substantially equivalent" to a Utah Offense.

C. Juvenile Adjudications. Utah does include certain juveniles adjudicated delinquent of sex offenses in juvenile court in their sex offender registration scheme, but not all that are required to be registered under SORNA. Any juvenile adjudicated delinquent of *any* sex or kidnap offense in Utah is subject to registration, but only if they:

1. Have been committed to the Division of Juvenile Justice Services for secure confinement; and

2. Remain in the Division’s custody 30 days prior to the person’s 21st birthday.

Because Utah’s registration of SORNA-registerable juveniles is based only on whether the juvenile remains in custody as of a certain age, Utah does not meet the SORNA requirements of this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Utah’s placement of these statutes within the SORNA three tier levels. Utah correctly places its statutes within at least the minimum appropriate SORNA tiers, except as noted, below (see the Appendix, “Utah’s State Statutes” for information about Utah’s classification of its offenders and associated registration requirements).

Utah has created a two-tier system for classifying its sex offenses. One class of offenders is required to register for ten years, and the other is required to register for life.

Because of the manner in which Utah determines the duration of an offender’s registration requirement (see section IX (B), below), the chart of offenses has been expanded to indicate whether the offense is a First, Second, or Third Degree Felony. The discussion of how an offender’s duration of registration is calculated is contained in section IX (A), below.

A. Ten-Year Offenses

Utah requires this class of sex offenders to register for ten years plus a duration of time as determined by the nature of the penalty.¹

Because the structure of Utah’s ten year offense category does not substantially disserve the requirements identified in SORNA, the inclusion of offenses in that category that are SORNA Tier I offenses does not substantially disserve SORNA’s requirements.

Utah currently classifies the following offenses as ten-year offenses, and would need to classify them as SORNA Tier II offenses to fully comply with SORNA:

- Utah Code Ann. § 76-4-401 Enticing a Minor (Felony) 1st, 2nd or 3rd Degree
- Utah Code Ann. § 76-5-401.2(a-c) Unlawful Sexual Contact 3rd Degree
- Utah Code Ann. § 76-5-404 Forcible Sexual Abuse, victim 14-18 2nd or 3rd Degree

¹ Please see Section IX(A) for more information about how the offense penalty affects the duration of registration.

- Utah Code Ann. § 76-5-412(2)(a) Custodial Sexual Misconduct, victim 16 or 17 2nd Degree
- Utah Code Ann. § 76-5-412(4)(a) Custodial Sexual Misconduct, victim 13-18 3rd Degree
- Utah Code Ann. § 76-7-102 Incest, victim 16 or 17 3rd Degree

Utah currently classifies the following offenses as ten-year offenses, and would need to classify them as SORNA Tier III offenses to fully comply with SORNA:

- Utah Code Ann. § 76-5-301 Kidnapping, victim 14-18 2nd Degree
- Utah Code Ann. § 76-5-412(2)(a) Custodial Sexual Misconduct, victim under 16 2nd Degree
- Utah Code Ann. § 76-5-412(4)(a) Custodial Sexual Misconduct, victim under 13 3rd Degree
- Utah Code Ann. § 76-7-102 Incest, victim under 16 3rd Degree

B. Lifetime Offenses

Utah properly classifies (or exceeds SORNA’s requirements by classifying) its remaining offenses as lifetime offenses. Please see Appendix A: Utah State Statutes for a more detailed discussion of Utah’s tiering scheme.

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

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

Utah has met SORNA’s full standard in all but 4 categories. For those categories where Utah has not fully met SORNA’s standards, there are notes regarding the level of Utah’s compliance.

1. International Travel Information: Utah does not presently register this information.
2. Notice Form: Utah does not make this form available in digital form.
3. Palm Prints: Utah does not presently register this information.

4. Temporary Lodging Information: Utah does not presently register this information, as defined by SORNA, which requires an offender to appear whenever that offender intends to be out of the jurisdiction for more than seven days. However, Utah does register any “secondary residence” which is defined as any real property that the offender owns or has a financial interest in, or any location where, in any 12 month period, the offender stays overnight a total of 10 or more nights when not staying at the offender’s primary residence.

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

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.

Utah meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, the 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.

Utah requires that any out-of-state offender initiating residence, employment or school enrollment within Utah must register within ten business days.

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

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).

Utah does not have a procedure in place which would capture those offenders who reenter the criminal justice system based on a non-sex crime conviction.

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

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 sex 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 jurisdiction 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.

Utah does not require that information about internet identifiers be updated immediately. In addition, once Utah captures international travel and temporary lodging information, Utah will need to ensure that that registration information is updated in the manner specified by SORNA.

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

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.

All Utah offenders convicted of “10 Year Offenses” (see discussion in Section III, above), are required to register for ten years. All offenders convicted of “Lifetime Offenses” (see Section III, above) are required to register for life.

All juvenile offenders in Utah that are required to register must register for ten years.

It is important, however, to note the following in reference to this discussion of duration of registration. Utah specifies that the registration period begins after an offender is no longer under the jurisdiction of the state as part of the sentence for the offense. The statute is structured in this way in order to provide for three distinct registration periods.

A 3rd Degree felony in Utah carries a penalty of 0 to 5 years, and an offender will serve a minimum of three years on probation and up to five years of supervision or incarceration. In this case, the ten year duration ‘count’ only starts once the term of incarceration or supervision are complete.

A 2d Degree felony carries a penalty of 1 to 15 years. Parole is allowed to be continued through the duration of the 15-year indeterminate sentence period, and the ten-year duration ‘count’ only starts once the term of incarceration or parole is complete.

A 1st degree felony carries a penalty of 5 years to life, and registration for an offense of this level will always be lifetime.

Because these periods of supervision effectively extend the duration of registration for ten-year offenses, the SMART Office has considered the above deviations from SORNA’s requirement, and has determined that they do not substantially disserve the purposes of this requirement.

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.

All adult offenders in Utah are required to appear, in person, every six months.

All juvenile offenders that are required to register must appear semi-annually, in person.

Because Utah only requires two in-person appearances for offenders who would be classified as Tier III under SORNA, Utah does not meet the SORNA requirements of this section.

X. 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.

Utah presently displays an employer's name on its public registry website, but only if the employer is a volunteer organization. Utah does not display any employer addresses.

Because Utah does not display any employment address information, Utah does not meet the SORNA requirements of 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.

Utah has established an email notification system which persons can subscribe to and receive a notification whenever an offender changes their residence (but not their place of employment or school attendance) to or from a particular geographic radius, or to track and individual offender.

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

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.

In Utah, when an offender has been convicted of an underlying felony sex offense and fails to register as required, they are subject to a felony failure to register charge. However, a person convicted of an underlying misdemeanor sex offense that fails to register as required is subject to a Class A Misdemeanor failure to register charge. In Utah, a conviction for the Class A Misdemeanor failure to register offense carries up to one year of incarceration and a mandatory year of probation supervision.

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

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.

Utah 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 to investigate the absconder and notify various law enforcement agencies.

Utah indicates that when a sex offender absconds from their registration requirement, then the registry contacts either law enforcement or probation, who are responsible for the investigation from that point forward. They do check national databases and will coordinate with the USMS when needed, but do not mandate that a warrant be issued as required by SORNA.

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

XV. Indian Tribes in Utah

There are four federally-recognized Indian Tribes located in Utah that are currently operating as SORNA registration jurisdictions:

1. Confederated Tribes of the Goshute Reservation
2. Navajo Nation
3. Skull Valley Band of Goshute Indians of Utah
4. Ute Indian Tribe of the Uintah & Ouray Reservation

Utah has spoken with the U.S. Marshals' Service and is enlisting the support of USMS to include all of the tribes in Utah's registration and notification scheme on an as-needed basis. The SMART Office will continue to work with Utah and the four SORNA Tribes within its borders to facilitate implementation of SORNA throughout the state.

There is a user agreement with Navajo Nation for access to the Utah CJIS system for NCIC. There is no current agreement in place for submission of criminal history information or fingerprints from any Tribe.

There are two additional federally-recognized tribes in Utah that are relevant to Utah's implementation efforts. The Paiute Indian Tribe of Utah appears to have no tribal lands. If that is the case, Utah is not responsible for any sex offender registration, notification or enforcement functions regarding this tribe until and unless the tribe comes into possession of land over which they have law enforcement jurisdiction.

The Northwestern Band of Shoshone Nation originally elected to become a SORNA registration jurisdiction, but opted out (as of May 17, 2008). Utah is working towards incorporating their land base into Utah's registration system. The tribe has approximately 200 acres of land situated near Washakie in Box Elder County.

Utah has sent letters to these two tribes who opted not to operate their own registries. The Northwestern Band of Shoshone Nation has not yet responded. An MOU is being developed with the Paiute Indian Tribe, allowing local law enforcement to perform the actual registrations for offenders residing on tribal lands (when and if that becomes a reality), but making enforcement the responsibility of the tribe.

The contact person at the State of Utah for sex offender registry information is:

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14717 S. Minuteman Drive
Draper, UT 84020
(801) 495-7700
jingle@utah.gov

Conclusion

Utah 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 Utah to substantially 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: Utah State Statutes

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

In reviewing Utah Statutes, the SMART Office understands that Utah has varied classifications for their sex offenders, as reflected in section IX, above.

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 Utah's Code require, at a minimum, Tier I classification under SORNA:

- **Utah Code Ann. § 76-4-401** **Enticing a Minor (Misdemeanor)**
- **Utah Code Ann. § 76-5-401.1** **Sexual Abuse of a Minor (Misdemeanor)**
- **Utah Code Ann. § 76-5-401.2(d)** **Unlawful Sexual Contact (Misdemeanor)**
- **Utah Code Ann. § 76-5-404** **Forcible Sexual Abuse (adult victim)**
- **Utah Code Ann. § 76-5-111(4)(a)(iv)** **Sexual Exploitation of a Vulnerable Adult**
- **Utah Code Ann. § 76-9-702** **Sexual Battery**

Utah only registers this offense upon a fourth conviction. SORNA requires its registration upon any conviction. A first offense would be classified as a Tier I offense under SORNA.

- **Utah Code Ann. § 76-9-702.7** **Voyeurism**

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 Utah's Code require, at a minimum, Tier II classification under SORNA:

- **Utah Code Ann. § 76-4-401** **Enticing a Minor (Felony)**

Utah classifies this offense as a Tier III offense (as described in sections III and IX, above), and classification as such exceeds SORNA's requirements.

- **Utah Code Ann. § 76-5-401.2(a-c)** **Unlawful Sexual Contact**

This offense involves a “sexual act” with a minor who is either 16 or 17 years old, which requires a Tier II classification.

- **Utah Code Ann. § 76-5-404** **Forcible Sexual Abuse**

This offense involves “sexual contact” with an individual 14 years of age or older. If the victim is between 14 and 18, this offense requires a Tier II classification.

- **Utah Code Ann. § 76-5-412(2)(a)** **Custodial Sexual Misconduct, victim 16 or 17**

This offense involves a “sexual act” with a minor who is either 16 or 17 years old, which requires a Tier II classification.

- **Utah Code Ann. § 76-5-412(4)(a)** **Custodial Sexual Misconduct, victim 13-18**

This offense involves “sexual contact” with an individual. If the victim is between 13 and 18, this offense requires a Tier II classification.

- **Utah Code Ann. § 76-5a-3** **Sexual Exploitation of a Minor**

Utah classifies this offense as a Tier III offense (as described in sections III and IX, above), and classification as such exceeds SORNA’s requirements.

- **Utah Code Ann. § 76-7-102** **Incest**

This offense involves a sexual act with a minor. If the victim is 16 or 17, a Tier II classification is required, and if the victim is under 16, a Tier III classification is required.

- **Utah Code Ann. § 76-10-1306(1)(b)** **Aggravated Exploitation of Prostitution**

Utah classifies this offense as a Tier III offense (as described in sections III and IX, above), and classification as such exceeds SORNA’s requirements.

Tier III Offenses

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Utah’s Code require, at a minimum, Tier III classification under SORNA, and, except as otherwise noted Utah classifies them all as Tier III offenses (as described in sections III and IX, above):

- **Utah Code Ann. § 76-5-301** **Kidnapping, victim 14-18**

- **Utah Code Ann. § 76-5-301.1** **Child Kidnapping**

- **Utah Code Ann. § 76-5-302** **Aggravated Kidnapping**
- **Utah Code Ann. § 76-5-402** **Rape**
- **Utah Code Ann. § 76-5-402.1** **Rape of a Child**
- **Utah Code Ann. § 76-5-402.2** **Object Rape**
- **Utah Code Ann. § 76-5-402.3** **Object Rape of a Child**
- **Utah Code Ann. § 76-5-403** **Forcible Sodomy**
- **Utah Code Ann. § 76-5-403.1** **Sodomy on a Child**
- **Utah Code Ann. § 76-5-404.1** **Aggravated Sexual Abuse of a Child**
- **Utah Code Ann. § 76-5-405** **Aggravated Sexual Abuse**
- **Utah Code Ann. § 76-5-412(2)(a)** **Custodial Sexual Misconduct,
victim under 16**

This offense involves a sexual act with a minor. If the victim is under 16, a Tier III classification is required.

- **Utah Code Ann. § 76-5-412(4)(a)** **Custodial Sexual Misconduct,
victim under 13**

This offense involves sexual contact with a minor. If the victim is under 13, a Tier III classification is required.