



August 2017

## **SORNA Substantial Implementation Review Commonwealth of Virginia - Updated**

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 Commonwealth of Virginia 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 updated review of Virginia's SORNA substantial implementation packet and has found that the Commonwealth of Virginia has substantially implemented SORNA.

In May 2010, the Office of the Governor of the Commonwealth of Virginia submitted a substantial implementation package that included relevant state statutes and a compliance report modeled after the SMART Office's Substantial Implementation Checklist. In addition, the SMART Office corresponded with the Virginia Office of the Attorney General and the Virginia Department of State Police, which filled in gaps in information about procedures. In September 2010, the SMART Office issued a SORNA Substantial Implementation Review to Virginia, in which Virginia was found not to have substantially implemented SORNA. In May, June and July 2011, the SMART Office received additional materials and information from the Virginia Office of the Attorney General. In August 2011, the SMART Office issued a revised Substantial Implementation Review to Virginia, in which Virginia was again found not to have substantially implemented SORNA. Following the issuance of the 2016 Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, in August 2016, the Virginia State Police submitted additional information to the SMART Office, including state statutes, updated policies and procedures, and updated forms that addressed several of the deficiencies identified in the September 2010 and August 2011 reviews and that informed this updated review.

Our review of the submitted 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 Virginia meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially disserve the purpose of that requirement. In other words, Virginia 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 commonwealth and contact 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's National Sex Offender Registry (NCIC/NSOR) and the jurisdiction's public sex offender registry website.

Virginia 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 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.

### **A. Virginia Offenses**

Virginia only requires registration upon the third conviction for the following offenses, which require registration for a first conviction under SORNA:

- § 18.2-67.4 – Sexual battery; and § 18.2-67.5(C) – Attempted sexual battery (for both offenses, where the victim is an adult and not mentally incapacitated, as defined in § 18.2-67.10)
- § 18.2-67.4:2 – Sexual abuse of child under 15 years of age<sup>1</sup>
- § 18.2-386.1 – Unlawful creation of image of another

In addition, Virginia does not require registration for the following offenses, which require registration under SORNA:

- § 18.2-47(B) – Abduction and kidnapping with the intent to extort money or for pecuniary benefit, where the victim is a minor and the abductor is not the victim's parent
- § 18.2-48 (iv) and (v) – Abduction of a minor who is 16 or 17 years old for the purpose of prostitution, or of any minor for the purpose of manufacturing child pornography
- § 18.2-355(3) – Consenting to taking, detaining person for prostitution (where the offender is the parent, legal guardian or custodian of the minor victim)
- § 18.2-371(ii) – Causing or encouraging acts rendering children delinquent, abused, etc. (where the offense involves engaging in consensual sexual intercourse with a child 15 or

---

<sup>1</sup> This offense involves sexual contact with a minor who is 13 or 14 years old. Per email communication with the Virginia State Police on July 21, 2017, most offenses involving sexual contact with minors, including minors who are 13 or 14 years old, are prosecuted under § 18.2-67.4, Sexual battery, which is registerable upon the first conviction if the victim is a minor.

older who is not the offender's spouse, child or grandchild, where the offender is more than four years older than the victim)

#### B. Offenses of Other SORNA Registration Jurisdictions

Virginia requires registration for any offense that is similar to a Virginia registerable offense, as well as any offense for which registration is required by the jurisdiction of conviction.<sup>2</sup> Therefore, Virginia does not require registration for any offense from another jurisdiction that is comparable to those offenses listed in subsection A (above) unless the person was or is required to register in the jurisdiction of conviction.

#### C. Federal Offenses

Virginia Code § 9.1-902(A)(6) includes in its definition of registerable offenses “[a]ny offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.” This definition encompasses all federal offenses for which SORNA requires registration.<sup>3</sup>

#### D. Military Offenses

Virginia Code § 9.1-902(A)(6) includes in its definition of registerable offenses “[a]ny offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.” This definition encompasses all military offenses for which SORNA requires registration.<sup>4</sup>

#### E. Foreign Offenses

Virginia Code § 9.1-902(A)(6) includes in its definition of registerable offenses “[a]ny offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.” This definition encompasses all foreign offenses for which SORNA requires registration.<sup>5</sup>

#### F. Juveniles

Virginia handles juveniles who are charged with sex offenses in several ways.

1. Policies and practices to prosecute as adults juveniles who commit serious sex offenses

There are no circumstances in which a juvenile will automatically be prosecuted in adult court. However, if a juvenile is at least 14 years old at the time that he or she commits rape in

---

<sup>2</sup> For purposes of this requirement, “jurisdiction” is defined as the 50 states, the District of Columbia, the five principal U.S. territories and federally recognized Indian tribes.

<sup>3</sup> This information was confirmed via email correspondence with Virginia State Police officials on July 13, 2017.

<sup>4</sup> This information was confirmed via email correspondence with Virginia State Police officials on July 18, 2017.

<sup>5</sup> This information was confirmed via email correspondence with Virginia State Police officials on July 18, 2017.

violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1, or object sexual penetration in violation of § 18.2-67.2, then, upon motion of the prosecutor, the court must hold a preliminary hearing. If the court finds at the hearing that probable cause exists, then the court will certify the charge, and all ancillary charges, to the grand jury, thereby transferring the case to adult court.<sup>6</sup> If the prosecutor chooses not to move for a preliminary hearing, then, as with all instances in which a juvenile is charged with any felony, the prosecutor can still move the juvenile court to hold a transfer hearing, at which the court determines whether the juvenile is suitable to be transferred to adult court. In making this determination, the court utilizes a number of factors beyond the existence of probable cause, including the juvenile's competency to stand trial; the juvenile's age, physical makeup, maturity, intellectual abilities and mental health; the nature and seriousness of the offense; the juvenile's criminal history; the existence of services in the adult and juvenile systems to address the juvenile's needs; and the length of time that the juvenile will be in the juvenile system to benefit from such services.

If the juvenile is transferred to adult court by either of the above mechanisms and is convicted of a registerable sex offense, the juvenile is subject to the same requirements as to duration of registration and frequency of appearances as adults convicted in adult court. In addition, information about juvenile registrants convicted in adult court is subject to distribution on Virginia's public registry website and through community notification methods to the same extent as information about adult registrants.

## 2. Policies and practices to register juveniles adjudicated delinquent for serious sex offenses

If a juvenile who commits a sex offense remains in juvenile court and is adjudicated delinquent, then the court, on motion of the prosecutor, can decide whether to require the juvenile to register. The prosecutor can make this motion at any time that the juvenile is within the court's jurisdiction for the offense at issue. The scope of offenses that trigger this eligibility for the court to exercise discretion are any of the offenses that trigger adult registration in Virginia. In determining whether to require a juvenile to register, the court is required to consider the following: the use of force, threat or intimidation in the act at issue; the age and maturity of the victim and of the juvenile offender, the nature of their relationship and the difference in their ages; the offender's prior criminal history; and any other aggravating or mitigating factors relevant to the case.<sup>7</sup>

## 3. Policies and practices to identify, track, monitor or manage juveniles adjudicated delinquent for serious sex offenses who are in the community

If a juvenile is adjudicated delinquent of a sex offense in Virginia, the juvenile undergoes a risk assessment that will help determine the type of services that the juvenile should receive. For juveniles who are placed on probation, community-based sex offender treatment services typically include individual, group and/or family therapy. The average length of treatment is 18 months. In instances where the juvenile resides in the same household as the victim, a juvenile who is on probation will require an out-of-home placement, which includes a foster home, a

---

<sup>6</sup> If the court does not find that probable cause exists, then the prosecutor may seek a direct indictment in adult court.

<sup>7</sup> § 9.1-902(G) outlines the scheme for registering adjudicated delinquent juveniles in Virginia.

local group home or a residential facility. Juveniles in out-of-home placements receive the same services as juveniles who remain in their residences. Regardless of the nature of the placement, the juvenile's probation officer will monitor the juvenile's treatment progress and will work to secure funding for necessary treatment services.

If the juvenile is committed to the commonwealth's Department of Juvenile Justice and is held in one of the commonwealth's two juvenile correctional centers, then the juvenile will receive an individualized sex offender treatment plan, developed and carried out by a multidisciplinary team. Treatment typically consists of individual, group and family therapy. The median length of treatment for these youth is 18 months.

4. Policies and practices to ensure that the identities and records of adjudicated juveniles are available as needed for public safety purposes

Information about juvenile registrants is made available to law enforcement through state and federal criminal justice databases and is subject to distribution on Virginia's public registry website and through community notification methods to the same extent as information about adult registrants.

These 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. The SMART Office has identified three categories of registrants for purposes of analyzing Virginia's duration of registration and frequency of registration requirements:

- Sexual offenders, who are required to register for life (with eligibility for removal after 15 years) and who must semiannually verify registration information.
- Sexual offenders, who are required to register for life (with eligibility for removal after 25 years) and who must semiannually verify registration information.
- Sexually violent offenders, who are required to register for life and quarterly verify registration information.

For clarification purposes, the SMART Office has reviewed all statutes identified in Virginia's registration and notification scheme and has placed these statutes within the three SORNA tier levels (see Appendix: Virginia Offense Tiering Review for a detailed analysis regarding this subsection of the review).

Virginia meets all 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. Virginia deviates from SORNA requirements in several ways.

In Virginia, the registry's criminal history section does not include the date of all of the offender's arrests. In addition, Virginia does not collect information on vehicles that are operated but not owned by the offender, nor does it collect information on where the vehicles are permanently or frequently kept, unless that location is the offender's residence address.

Virginia requires that every registered offender appear every two years to be photographed, unless the offender consents at his or her semiannual verification visit. In addition, Virginia does not collect professional licensing information, digitized copies of passports or immigration documents, temporary lodging information or any kind of telephone numbers from offenders.

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 or she is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work or attend school in the jurisdiction.

Virginia 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 or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

Virginia 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 re-enter the jurisdiction's criminal justice system because of a some other felony crime (whether or not it is a sex offense).

Virginia recaptures sex offenders who are currently serving a sentence for the predicate sex offense or for some other crime, and the jurisdiction recaptures offenders who are already registered or subject to a pre-existing sex offender registration requirement. In 2013, the General Assembly of Virginia passed HB 1862,<sup>8</sup> which amended Virginia Code § 9.1-902 to add to the list of registerable offenses several pre-1975 offenses that are similar to current registerable offenses in Virginia. In addition, in 2015, through HB 1353,<sup>9</sup> the General Assembly of Virginia enacted Virginia Code § 9.1-923, which requires the Virginia State Police to establish and maintain a "Supplement to the Registry" that contains limited registration information for individuals convicted of certain sex offenses between July 1, 1980, and June 30, 1994. The individuals listed in the supplement are not required to verify their registration information; however, their names and other limited registration information appear in a list on the Virginia State Police's public registry website.

Virginia does not recapture formerly registered offenders who re-enter the system because of a conviction for a new nonregisterable felony offense.

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 registered sex offender resides in a jurisdiction, the 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, the 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.

---

<sup>8</sup> HB 1862 is also known as SB 1032.

<sup>9</sup> HB 1353 is also known as SB 1074.

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 intent to relocate to another country to live, work or attend school, or 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 and immediately update NCIC/NSOR.

Virginia meets all of the SORNA requirements in this section.

## **IX. Verification/Appearance Requirements**

SORNA requires that offenders register for a duration of time and make in-person appearances at the registering agency, based on the tier of the offense of conviction.

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

In Virginia, all offenders register for life unless they are granted early removal, as discussed in IX(C) below.

Virginia meets the SORNA requirements in this section.

### **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.

In Virginia, every sex offender who resides in Virginia is visited every six months at his or her residence by a state trooper or Department of Corrections personnel. The official verifies the offender's registration information and, if the offender consents, takes a new photograph of the offender (otherwise, a new photograph is taken every two years). If the offender is not present at the residence when the official visits and cannot be located, then Virginia State Police personnel initiate an investigation to determine the offender's whereabouts. In addition, every time an offender reports an address change, an official conducts a verification visit within 30 days of that report.



Virginia also mails to all of its offenders a certified reregistration form, form 236A. The offender is required to sign, date and place his or her two thumbprints on the form.<sup>10</sup> For “sexually violent offenders,” the form is mailed out quarterly, unless the offender has been convicted of failing to provide registration information in violation of § 18.2-472.1, in which case the form is mailed out every 30 days. For “sexual offenders,” the form is mailed out annually, unless the offender has been convicted of failing to provide registration information in violation of § 18.2-472.1, in which case the form is mailed out every 180 days. If the offender does not return the form within 30 days, Virginia State Police personnel automatically visit the offender.

Offenders who work and/or attend school in Virginia, but who do not live there, are only required to complete and return the reregistration form as described above. However, within 30 days of the offender registering a work address, a state trooper or Department of Corrections official will verify with the employer that the offender works there, and within 30 days of the offender registering school enrollment, a state trooper or Department of Corrections personnel will verify with an admissions official that the offender is enrolled there.

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

### C. Reduction of Registration Periods

#### 1. Removal From the Registry

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

Virginia deviates from SORNA’s requirements in that it allows certain offenders to petition for removal earlier than allowed under SORNA. Specifically, “sexual offenders” convicted of the following offenses can petition for removal after registering for 15 years; however, under SORNA, offenders convicted of these offenses are only eligible for removal after 25 years:

- § 18.2-67.4 – Sexual battery with a minor 13–17
- § 18.2-91 – Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony, where the underlying felony is a Tier II offense
- § 18.2-346(B) – Solicitation of prostitution, where the victim is a minor
- § 18.2-355(4) – Taking a person for prostitution, where the victim is a minor
- § 18.2-356 – Receiving money for procuring person, where the victim is a minor
- § 18.2-357 – Receiving money from earnings of male or female prostitute, where the victim is a minor
- § 18.2-357.1 – Commercial sex trafficking, where the victim is a minor
- § 18.2-361(B) – Crimes against nature, where the victim is 16 or 17
- § 18.2-366(B) – Incest, where the victim is 16 or 17

---

<sup>10</sup> Upon receipt, a Virginia State Police fingerprint official analyzes the thumbprints.

- § 18.2-370.6 – Penetration of mouth of child with lascivious intent

In Virginia, “sexual offenders” convicted of the following offenses can petition for removal after registering for 25 years; however, under SORNA, offenders convicted of these offenses are ineligible for removal:

- § 18.2-64.1 – Carnal knowledge of certain minors<sup>11</sup>

In Virginia, “sexual offenders” convicted of the following offenses can petition for removal after registering for 15 years; however, under SORNA, offenders convicted of these offenses are ineligible for removal:

- § 18.2-47(A) – Abduction and kidnapping, where the victim is a minor and the abductor is not the victim’s parent
- § 18.2-48(i) – Abduction with intent to extort money or pecuniary benefit, where the victim is a minor and the abductor is not the victim’s parent
- § 18.2-63(A) – Carnal knowledge of a child between 13 and 15 years of age, where the perpetrator is five years older than the victim
- § 18.2-67.4 – Sexual battery with a minor under 13 (unless the victim is under 6 and the perpetrator is 18 or older)
- § 18.2-90 – Entering dwelling house, etc., with intent to commit rape
- § 18.2-91 – Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony, where the underlying felony is a SORNA Tier III offense
- § 18.2-361(B) – Crimes against nature, where the victim is under 16
- § 18.2-366(B) – Incest, where the victim is under 16

## 2. Relief From Submission of the Reregistration Form

As discussed above, “sexually violent offenders” are not eligible to petition for removal. However, “sexually violent offenders,” as well as “sexual offenders” who have been convicted of failing to provide registration information in violation of § 18.2-472.1, can petition for relief from completing and returning the reregistration form more than once a year. A “sexually violent offender” is eligible to petition three years after the beginning of the registration period, unless he or she has been convicted of a violation of § 18.2-472.1, in which case he or she cannot petition until five years from the date of the conviction for violating § 18.2-472.1. Likewise, a “sexual offender” who has to register semiannually as a result of being convicted of violating § 18.2-472.1 has to wait until five years from the date of that conviction to petition. After a comprehensive assessment, the court will hold a hearing to determine whether the offender is a danger to others and whether the offender has sufficient ability to control his or her sexual behavior. If the court finds by clear and convincing evidence that the offender is not a danger and

---

<sup>11</sup> For purposes of this statute, “certain minors” are minors who are at least 15 years old and the offender is an individual who is providing the minor services under the purview of juvenile court or the Virginia Department of Juvenile Justice.

has sufficient ability to control his or her sexual behavior, the court will grant the petition. If the court grants the petition, the offender still has to complete and return form 236A annually.

In addition to the above procedure, an offender can petition for relief from the requirement to regularly complete and return form 236A based on physical incapacity. After an assessment of the offender's physical health, the court will hold a hearing to determine whether the offender is a danger to others and whether the offender is incapable of reregistering. If the court finds clear and convincing evidence that the offender is not a danger and is not capable of reregistering, the court will grant the petition. If the court grants the petition, then the Virginia State Police still has to verify and report on whether the offender continues to have the physical incapacity, and has to do so on a quarterly or annual basis, depending on whether the offender is a "sexual offender" or a "sexually violent offender."

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

#### D. Clean Record Requirement

In addition to having to remain on the registry for a certain period of time, offenders have to meet other requirements before they are eligible for removal. For offenders in the "sexual offender" category who are eligible for removal after 15 years, there must also be at least a 15-year period immediately prior to the petition for removal in which the offender has not been convicted of any offense for which imprisonment for more than one year may be imposed, and in which the offender has not been convicted of a violation of § 18.2-472.1. For offenders in the "sexual offender" category who are eligible for removal after 25 years, there must also be at least a 25-year period immediately prior to the petition for removal in which the offender has not been convicted of any offense for which imprisonment for more than one year may be imposed, and in which the offender has not been convicted of a violation of § 18.2-472.1. In addition, the offender must not have been convicted of any additional registerable offenses at any point, and the offender cannot petition until all court-ordered treatment, counseling and restitution have been completed.

In order for a petition for removal to be successful, the court must hold a hearing. The court must inform the Commonwealth Attorney's Office of the hearing, and "any interested persons" can present witnesses and other evidence. If the court determines that the offender no longer poses a risk to public safety, then the court will grant the petition.

Virginia does not require an offender to complete periods of supervised release without revocation in order to petition for removal.

These deviations do not substantially disserve the purposes of 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.

Virginia meets all of the SORNA requirements in this section.

## **XI. Community Notification**

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

While National Child Protection Act agencies do not have access to Virginia's law enforcement-only registry, they may sign up for automatic notifications of changes to registration information through Virginia's community notification system.

This deviation does 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.

For offenders in the "sexually violent offender" category, the criminal penalty for the first conviction of a failure to register is a maximum term of imprisonment of five years. For offenders in the "sexual offender" categories, the criminal penalty for the first conviction of a failure to register is a maximum term of imprisonment of one year. For offenders in the "sexual offender" categories, the criminal penalty for any subsequent conviction includes a maximum term of imprisonment of five years. In addition, as discussed in Sections IX(B), IX(C) and IX(D), a failure to register conviction results in an increase in how frequently an offender must submit a reregistration form, and lengthens the period an offender must wait before petitioning for relief from submitting the registration form or for removal from the registry.

This deviation does not substantially disserve the purposes 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 of a sex offender's intent to reside, be employed or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving the notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Virginia 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.

Virginia does not notify the United States Marshals Service that an offender has absconded unless the Marshals Service's resources are needed to locate that offender.

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

## **Conclusion**

Virginia has put forth exceptional work and effort in adopting SORNA and enhancing its sex offender registration and notification system. We encourage Virginia to continue to work toward meeting all the provisions of SORNA and to work with SMART Office personnel to maintain Virginia's status as having substantially implemented SORNA. Virginia is expected to keep the SMART Office informed of its progress toward the continuing implementation of SORNA and the SMART Office will continue to provide any necessary technical assistance toward that end.

We encourage you to contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

## Appendix: Virginia Offense Tiering Review

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

In reviewing Virginia statutes, the SMART Office has identified three categories of registrants for purposes of analyzing Virginia's duration of registration and frequency of registration requirements:

1. Sexual offenders, who are eligible for removal from the registry after 15 years and semiannually verify registration information.
2. Sexual offenders, who are eligible for removal from the registry after 25 years and semiannually verify registration information.
3. Sexually violent offenders, who are required to register for life and quarterly verify registration information.

### 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 Virginia statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 18.2-67.3 Aggravated sexual battery (victim is an adult)
- § 18.2-67.4 Sexual battery (victim is an adult)
- § 18.2-67.4:2 Sexual abuse of a child under 15
- § 18.2-67.5(B) Attempted aggravated sexual battery (victim is an adult)
- § 18.2-67.5(C) Attempted sexual battery
- § 18.2-91 Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony (underlying felony is a Tier I offense)
- § 18.2-371(ii) Causing or encouraging acts rendering children delinquent, abused, etc. (engaging in consensual sexual intercourse with a child 15 years old not his spouse, child or grandchild, where the offender is more than four years older than the victim)
- § 18.2-374.1:1(A), (B) Possession of child pornography
- § 18.2-374.1:1(D) Possession of child pornography (as it was in effect July 1, 1994, to June 30, 2007)
- § 18.2-386.1 Unlawful filming, videotaping or photographing of another

## SORNA Tier II Offenses

SORNA requires that Tier II offenders register for a minimum of 25 years and semiannually verify registration information. The following offenses listed in Virginia statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 18.2-67.3 Aggravated sexual battery (victim is 13–17)
- § 18.2-67.4 Sexual battery (victim is 13–17)
- § 18.2-67.5(B) Attempted aggravated sexual battery (victim is 13–17)
- § 18.2-91 Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony (underlying felony is a Tier II offense)
  
- § 18.2-346(B) Solicitation of prostitution (victim is a minor)
- § 18.2-355(4) Taking a person for prostitution (victim is a minor)
- § 18.2-356 Receiving money for procuring person (victim is a minor)
- § 18.2-357 Receiving money from earnings of male or female prostitute (victim is a minor)
  
- § 18.2-357.1 Commercial sex trafficking (victim is a minor)
- § 18.2-361(B) Crimes against nature (victim is 16 or 17)
- § 18.2-366(B) Incest (victim is 16 or 17)
- § 18.2-370(A) (3)(4)(5) Taking indecent liberties with children
- § 18.2-370(B) Taking indecent liberties with children
- § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship ((i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child)
  
- § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship ((ii) proposes to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361)
  
- § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship ((iv) proposes that any such child expose his or her sexual or genital parts to such person)
  
- § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship ((v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person)
  
- § 18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship ((vi) sexually abuses the child as defined in § 18.2-67.10) (victim is 13–17)
  
- § 18.2-370.6 Penetration of mouth of child with lascivious intent

- § 18.2-374.1 Production, publication, sale, financing, etc., of child pornography
- § 18.2-374.1:1(C) Reproduction, distribution of child pornography
- § 18.2-374.3 Use of communications systems to facilitate certain offenses involving children

### **SORNA Tier III Offenses**

SORNA requires that Tier III offenders register for life and quarterly verify registration information.

The following offenses listed in Virginia statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 18.2-31(5) Capital murder (the willful, deliberate and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration)
- § 18.2-32 First and second degree murder (in the commission of or attempt to commit rape, forcible sodomy, inanimate or animate object sexual penetration, or abduction [if the abduction is of a minor])
- § 18.2-47(A) Abduction and kidnapping (victim is a minor and abductor is not the victim's parent)
- § 18.2-48(i) Abduction with intent to extort money or pecuniary benefit (victim is a minor and abductor is not the victim's parent)
- § 18.2-48(ii) and (iii) Abduction of any person with intent to defile such person (victim is under 18), or of any child under 16 years of age for the purpose of concubinage or prostitution
- § 18.2-61 Rape
- § 18.2-63 Carnal knowledge of a child 13–15 years of age (perpetrator is more than five years older than the victim)
- § 18.2-63 Carnal knowledge of a child 13–15 years of age (perpetrator is between four and five years older than the victim)
- § 18.2-64.1 Carnal knowledge of certain minors
- § 18.2-67.1 Forcible sodomy
- § 18.2-67.2 Object sexual penetration
- § 18.2-67.3 Aggravated sexual battery (victim is under 13)
- § 18.2-67.4 Sexual battery (victim is under 13)
- § 18.2-67.5(A) Attempted rape, forcible sodomy, object sexual penetration
- § 18.2-67.5(B) Attempted aggravated sexual battery (victim is under 13)
- § 18.2-90 Entering dwelling house, etc., with intent to commit rape



