



October 2016

SORNA Substantial Implementation Review State of Vermont

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to acknowledge the State of Vermont for the work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Vermont's SORNA substantial implementation packet and has found the State of Vermont to have not substantially implemented SORNA.

In April 2016, the Vermont Crime Information Center submitted a substantial implementation package that included a completed Substantial Implementation Checklist-Revised, current Vermont statutes and all Vermont criminal offenses which require registration. Additional materials were submitted for SMART's review, including registry database information, public education materials and other supporting documentation.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Vermont 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. Vermont 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, Vermont should also work toward rectifying the deviations that do not substantially disserve the purposes of SORNA.

This is an exhaustive review and meant to detail every area in which the state has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

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

Vermont notifies law enforcement agencies within the state and in other states (including US territories, the District of Columbia, and tribal jurisdictions), as appropriate, updates its public sex offender registry website, and updates the FBI databases when an offender initially registers and/or updates information within the appropriate timeframes. Though the timeframe and practices are not specifically spelled out in statute, they are carried out in practice.

Vermont meets 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.

Vermont requires registration when any person is convicted of a listed sex offense, or a conviction for an offense of the law of another jurisdiction, including a military court, in which "elements of the crime mirror Vermont statutes or the individual was required to register in another jurisdiction."

A. Vermont Offenses

While Vermont captures most of the offenses required by SORNA, there is no substantially equivalent crime to false imprisonment of a minor and video voyeurism of a minor is not a registerable offense upon first conviction (only upon a subsequent conviction).

B. Federal Offenses

In Vermont, registration is required for any offender if the offense committed in another jurisdiction, including those resulting in convictions in federal court, is substantially equivalent to a Vermont registerable offense. However, while this scheme will include many of the federal offenses requiring registration, Vermont does not require registration for the following federal offenses:

- 18 U.S.C. §2252B (Misleading Domain Names on the Internet)
- 18 U.S.C. §2252C (Misleading Words or Digital Images on the Internet)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

C. Military Offenses

Vermont requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is comparable to a Vermont sex offense. Vermont will register most of the military offenses required by SORNA. Nevertheless, there are some

UCMJ Offenses (such as Conduct Unbecoming) that are not comparable to those registerable under Vermont law and, therefore, would not be registered under Vermont's existing scheme.

D. Foreign Offenses

Vermont does not require registration for offenses committed in foreign countries.

E. Juveniles

Vermont does not require registration of juveniles adjudicated delinquent for any sex offense.

Because Vermont does not register juveniles in accordance with SORNA requirements, Vermont 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 Vermont's materials and has identified Vermont's placement of these statutes within the SORNA three tier levels (see attached "Vermont Offense Tiering Review" for a detailed analysis regarding this subsection of the review).

Vermont's current registration and notification scheme includes two categories of registrants: 10 years registration for most offenses; lifetime registration is required for a second or subsequent conviction for a registerable sex offense, a conviction of Sexual Assault or Aggravated Sexual Assault, or individuals that have been designated as Sexually Violent Predators (see Section IX for more information about frequency and duration of registration).

The following Vermont offenses presently require 10 year registration with annual in-person verification (unless they meet the lifetime registrant criteria, as detailed in Section IX of this report); to meet SORNA requirements these offenses would, at minimum, require 15 year registration with annual in-person verification:

- § 1379(a). Sexual abuse of a vulnerable adult
- § 2405(a)(1)(D). Kidnapping with intent to commit sexual assault (victim who is an adult)
- § 2601. Lewd and lascivious conduct (victim who is an adult)
- § 2605(b) or (c). Voyeurism (victim who is a minor)
- § 2827. Possession of child pornography

The following Vermont offenses also presently require 10 year registration with annual in-person verification (unless they meet the lifetime registrant criteria, as detailed in Section IX of this report); to meet SORNA requirements these offenses would, at minimum, require 25 year registration with twice-annual in-person verification:

- § 2601. Lewd and lascivious conduct (victim age 16-17)
- § 2602. Lewd and lascivious conduct with a child (victim age 13-15)
- § 2632(a)(6). Procurement or solicitation (victim who is a minor)
- § 2635. Slave traffic (victim who is a minor)
- § 2652. Sex trafficking of children or sex trafficking by force, fraud, or coercion
- § 2652(a)(1)(4). Human trafficking
- § 2653(a)(4). Aggravated human trafficking
- § 2822. Use of a child in a sexual performance
- § 2823. Consenting to a sexual performance
- § 2824. Promoting a recording of sexual conduct
- § 2828. Luring a child
- § 3258. Sexual exploitation of a minor (victim age 16-17)

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

- § 1379(b). Sexual abuse of a vulnerable adult
- § 2405(a)(1)(D). Kidnapping (victim who is a minor)
- § 2602. Lewd and lascivious conduct with a child (victim under age 13)
- § 3258. Sexual exploitation of a minor (victim under age 16)

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

- Driver's license or ID card
- Employer address
- Internet identifiers
- Name: Ethnic or Tribal names by which they are commonly known
- Palm prints
- Passports and immigration documents
- Phone numbers
- Physical description: any identifying marks, such as scars or tattoos
- Professional licensing information
- Vehicle information (only collected for individuals determined to be noncompliant high-risk)

Vermont does not meet the SORNA requirements of 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.

Vermont meets the SORNA requirements of this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

In Vermont, when a sex offender is sentenced within the jurisdiction, but not incarcerated, registration can occur up to 10 days after sentencing. Similarly, sex offenders who move to Vermont from another state have up to 10 days to report for registration.

Vermont 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).

Vermont applies its registration law to any person convicted of a registerable offense in Vermont on or after July 1, 1996, a person convicted prior to July 1, 1996 but incarcerated or supervised by the Department of Corrections on or after July 1, 1996, and a person convicted or released from confinement in another state on or after July 1, 1986 and who established residency in Vermont on or after July 1, 1996.

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

VIII. Keeping the Registration Current

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

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

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender notify the residence jurisdiction at least 21 days in advance of such travel. In addition, SORNA requires that when an offender notifies the jurisdiction of his intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Vermont's statutes and policies meet some of the SORNA requirements in this section, with exceptions. While Vermont requires offenders to report to law enforcement within three days changes in name, address, employment, and school information, offenders are not required to report in person. Furthermore, Vermont does not require offenders to report changes to Internet identifiers or vehicle information.

When an offender notifies law enforcement that he/she intends to relocate to another country Vermont does not notify the United States Marshals Service. In addition, Vermont does not require registered sex offenders to provide 21 day advance notice of international travel and does not immediately notify the United States Marshals Service (USMS), other jurisdictions where the sex offender may be registered, or update NCIC/NSOR as required by the SORNA Supplemental Guidelines, published on January 11, 2011.

Because Vermont does not require offenders to update information in-person to law enforcement or provide 21 day advance notice of international travel and notify the USMS, Vermont does not meet the SORNA requirements of this section.

IX. Verification/Appearance Requirements

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.

Vermont's registration and notification scheme deviates from SORNA requirements in that sex offenders are required to either register for 10 years or for life. All sex offenders are expected to register for a minimum of ten years.

Vermont requires lifetime registration under three different scenarios:

- With a second or subsequent conviction for a registerable sex offense.
- With a conviction of Sexual Assault (§ 3252) or Aggravated Sexual Assault (§ 3253)
- With a designation as a Sexually Violent Predator¹

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.

Vermont requires that all registered sex offenders must annually update information with law enforcement; quarterly registration is required if the offender is determined to be a sexually violent predator. Additionally, Vermont requires increased reporting requirements for individuals designated as noncompliant high-risk sex offenders,² including:

- In person reporting to law enforcement every 30 days.
- Reporting to law enforcement prior to any change of address.

¹ Within 15 days after the conviction of a sex offender, the state may file a petition with the court requesting that the person be designated as a sexually violent predator. The determination of whether a person is a sexually violent predator shall be made by the court at the time of sentencing. In making a determination of whether the person is a sexually violent predator, the court shall examine the following: (1) the person's criminal history; (2) any testimony presented at trial, including expert testimony as to the person's mental state; (3) the person's history of treatment for a personality disorder or mental abnormality connected with his or her criminal sexual behavior; (4) any mitigating evidence, including treatment history, evidence of modified behavior, or expert testimony, which the convicted sex offender wishes to provide to the court prior to the determination; and (5) any other relevant evidence. The standard of proof when the court makes such a determination shall be clear and convincing evidence that the convicted sex offender suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

² Noncompliant high-risk sex offenders are defined as individuals convicted of lewd and lascivious conduct with a child, sexual assault, aggravated sexual assault (or any attempt to commit one of these offenses), who are designated as a high-risk sex offender, and noncompliant with sex offender treatment as defined by Department of Corrections.

- Reporting prior to enrollment in or separation from any postsecondary educational institution.
- Reporting within one day of any change in a place of employment.
- Reporting to law enforcement the make, model, color, registration, and license plate number of any vehicle the person operates prior to operation.
- Reporting to law enforcement annually for the taking of photographs for posting on public registry website
- Periodic unannounced registry compliance checks to verify the accuracy of Registry information.

C. Reduction of Registration Periods

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

While Vermont does not allow offenders reduced registration periods, Vermont deviates from SORNA in its process for terminating registration requirements. After 10 years have elapsed from the completion of the sentence, a lifetime registrant who is not designated as a noncompliant high-risk sex offender may petition the Criminal Division of the Superior Court for a termination of community notification, including public website posting.

Vermont does not meet the SORNA requirements of 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. Vermont’s public registry website requirements deviate from SORNA requirements in that the public registry website is not searchable by zip code or geographic radius and does not display the following information required by SORNA:

- Absconder (may list on website as “wanted” or “non-compliant”)
- Employer address
- School address
- Vehicle(s) information, including license plate number(s) and vehicle description(s)

Additionally, Vermont does not post all of its registered sex offenders on the public registry website. Only offenders convicted of the following offenses, or under the following circumstances are posted:

- Aggravated sexual assault of a child
- Aggravated sexual assault
- Sexual assault
- Kidnapping with intent to commit sexual assault

- Lewd or lascivious conduct with a child
- Second or subsequent conviction for voyeurism
- Slave traffic
- Sex trafficking of children or sex trafficking by force, fraud, or coercion
- Sexual exploitation of a minor
- A second or subsequent conviction for sexual offenses (recidivism).
- Individuals with an outstanding warrant for their arrest for a registry violation.
- Individuals who have been designated as sexual predators.
- Individuals who have been designated “high risk offenders” by the Department of Corrections.³
- Individuals who have not complied with or are ineligible for sex offender treatment as recommended by the Department of Corrections.

Vermont 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.

Vermont monitors the SORNA Exchange Portal to send and receive inter-jurisdictional changes of residence, employment or student status from other jurisdictions. However, Vermont does not provide notification to prosecutors’ offices, probation agencies, or other agencies involved with criminal investigation, prosecution, or other supervision functions, nor are agencies responsible for conducting background checks.

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

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Vermont meets the SORNA requirements of this section.

³ The Department of Corrections evaluates sex offenders for the purpose of determining whether the offender is “high risk” and should be subject to increased public access to his or her status as a sex offender and related information, including Internet access.

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.

While Vermont does not have a statute or policy for notifying a jurisdiction that an offender failed to appear, Vermont does utilize the SORNA Exchange Portal to notify an out-of-state jurisdiction that provided a notification that a sex offender failed to appear for registration. However, this may not be comprehensive as not all SORNA jurisdictions utilize the portal.

These deviations do not substantially disserve the purposes 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.

In Vermont, if the Department of Public Safety is unable to verify the address of a sex offender, it immediately notifies local law enforcement and the county state's attorney. The registry is then updated to reflect non-compliance and a warrant is sought. Local law enforcement work with U.S. Marshals to pursue investigation of the absconder.

Vermont does not mandate entry of absconder information into NCIC's Wanted Person File; however, if Vermont issues a felony or misdemeanor warrant then that information is entered into the NCIC Wanted Person file.

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

Conclusion

We encourage Vermont to continue to work towards meeting the provisions of SORNA. However, there are many provisions identified in this report that should be addressed in order for Vermont to substantially implement SORNA. Please contact the SMART Office with any questions or concerns once you have had the opportunity to review and discuss our findings.

Appendix: Vermont Offense Tiering Review

The SMART Office has reviewed all Vermont statutes identified in its substantial implementation submission package and has identified Vermont'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). It should be noted that SORNA requires all attempts, conspiracies, and solicitations to mirror requirements of the actual offense. Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Vermont. It is possible that other offenses will need to be included in Vermont's sex offender registry to substantially implement SORNA. For more guidance on SORNA classes of offenders, see 42 USC § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

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

1. 10-year registrants, who are required to report to local law enforcement each year to verify registration information.
2. Lifetime registrants who are required to report to law enforcement each year to verify registration information:
 - With a second or subsequent conviction for a registerable sex offense.
 - With a conviction of Sexual Assault or Aggravated Sexual Assault
3. Lifetime registrants who are required to report to law enforcement quarterly to verify registration information:
 - Individuals that have been designated as Sexually Violent Predators

Tier I Offenses

SORNA requires a minimum duration of 15 years for all Tier I offenses and a one-year interval for in-person registration verification. In order to meet these minimum requirements, Vermont must ensure that the registration duration is 15 years for State offenses equivalent to Tier I offense under SORNA, as well as continue to require annual in-person verification of registration information. The following offense listed in Vermont Code would require, at minimum, Tier I registration requirement:

- § 1379(a). Sexual abuse of a vulnerable adult
- § 2405(a)(1)(D). Kidnapping with intent to commit sexual assault (victim who is an adult)
- § 2601. Lewd and lascivious conduct (victim who is an adult)
- § 2605(b) or (c). Voyeurism (victim who is a minor)
- § 2827. Possession of child pornography

Tier II Offenses

SORNA requires a minimum duration of 25 years for all Tier II offenses and a 6-month interval for in-person registration verification. Vermont currently does not utilize this tier in their registration scheme. However, the following offenses listed in Vermont Code would require, at minimum, Tier II registration requirements:

- § 2601. Lewd and lascivious conduct (victim age 16-17)
- § 2602. Lewd and lascivious conduct with a child (victim age 13-15)
- § 2632(a)(6). Procurement or solicitation (victim who is a minor)
- § 2635. Slave traffic (victim who is a minor)
- § 2652. Sex trafficking of children or sex trafficking by force, fraud, or coercion
- § 2652(a)(1)(4). Human trafficking
- § 2653(a)(4). Aggravated human trafficking
- § 2822. Use of a child in a sexual performance
- § 2823. Consenting to a sexual performance
- § 2824. Promoting a recording of sexual conduct
- § 2828. Luring a child
- § 3258. Sexual exploitation of a minor (victim age 16-17)

Tier III Offenses

SORNA requires lifetime registration for all Tier III offenses and a 90-day interval for in-person registration verification. The following offenses listed in Vermont Code would require Tier III registration requirements:

- § 1379(b). Sexual abuse of a vulnerable adult
- § 2405(a)(1)(D). Kidnapping (victim who is a minor)
- § 2602. Lewd and lascivious conduct with a child (victim under age 13)
- § 3252. Sexual assault
- § 3253. Aggravated sexual assault
- § 3253a. Aggravated sexual assault of a child
- § 3258. Sexual exploitation of a minor (victim under age 16)