



April 2016

SORNA Substantial Implementation Review State of Wisconsin

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

In July 2015, the Wisconsin Department of Corrections, Division of Community Corrections, submitted to the SMART Office for review a SORNA substantial implementation package, consisting of a completed SORNA Substantial Implementation Checklist, a description of the state's progress in implementing SORNA, and a memo detailing the state's tribal policy.

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 Wisconsin 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. Wisconsin 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, Wisconsin 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 (within 3 business days) 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.

Wisconsin notifies law enforcement agencies within the state (including the only Indian Tribe located within the state), updates its public sex offender registry website, and updates the FBI databases when an offender initially registers and/or updates information. However, Wisconsin does not notify US territories or tribal jurisdictions located outside of the state of any updates to registration information. Further, Wisconsin defines “immediate” as 10 days.

Wisconsin does not meet the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses 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.

A. Wisconsin Offenses

Wisconsin captures the offenses for which SORNA requires registration.

B. Offenses of Other SORNA Registration Jurisdictions

In Wisconsin, registration is required for any offender if the offense committed in another jurisdiction is comparable to a Wisconsin registerable offense. Additionally, if a person is registered in another state for an offense, then that person must register in Wisconsin for a period of ten years.¹

C. Federal Offenses

In Wisconsin, registration is required for any offender if the offense committed in another jurisdiction is comparable to a Wisconsin registerable offense. Additionally, if a person is registered in another state for an offense, then that person must register in Wisconsin. However, while this scheme will include many of the federal offenses requiring registration, Wisconsin does not require registration for the following federal offenses:

- 18 U.S.C. §1591 (Sex Trafficking by Force, Fraud, or Coercion)
- 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. §2421 (Transportation of a Minor for Illegal Sexual Activity)
- 18 U.S.C. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places)
- 18 U.S.C. §2424 (Failure to File Factual Statement about an Alien Individual)

¹ See Section IX for more information about duration of registration requirements.

- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

D. Military Offenses

Wisconsin requires offenders to register if they committed offenses requiring registration under military law, if the offense committed is comparable to a Wisconsin sex offense. Wisconsin 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 Wisconsin law and, therefore, would not be registered under Wisconsin's existing scheme.

E. Foreign Offenses

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

F. Juvenile Adjudications

Wisconsin requires all juveniles adjudicated delinquent for sex offenses to register.

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. Wisconsin's registration and notification scheme deviates from SORNA requirements in that it requires all sex offenders to register for either 15 years or life (see Section IX for information about frequency of reporting and duration of registration requirements). For clarification purposes, the SMART Office has reviewed all statutes identified in Wisconsin's registration and notification scheme and has placed these statutes within the SORNA three tier levels (see Appendix: Wisconsin Offense Tiering Review for a detailed analysis regarding this subsection of the review).

The following Wisconsin offenses require 15 year registration and annual verification; these offenses are equivalent to SORNA Tier II offenses requiring registration for 25 years with twice-yearly appearances:

- § 940.22(2): Sexual Exploitation by Therapist (where victim is 13-17)
- § 940.225(3): Third Degree Sexual Assault (where the offense involves sexual contact and the victim is 13-17)
- § 940.302(2): Human Trafficking (where § 940.302(2)(a)(1b) applies)
- § 948.05: Sexual Exploitation of a Child
- § 948.051: Trafficking of a Child
- § 948.07(1-4): Child Enticement

- § 948.075: Use of a Computer to Facilitate a Child Sex Crime
- § 948.08: Soliciting a Child for Prostitution
- § 948.095: Sexual Assault of a Child by a School Staff Person or a Person who Works or Volunteers with Children (where the victim is 13 or older and the offense involves sexual contact)

The following Wisconsin offenses require 15 year registration and annual verification; these offenses are equivalent to SORNA Tier III offenses requiring lifetime registration with quarterly appearances:

- § 940.22: Sexual Exploitation by Therapist (where the victim is under 13)
- § 940.225(3): Third Degree Sexual Assault (where the offense involves sexual intercourse or where the victim is under 13)
- § 940.31: Kidnapping (if the victim is a minor and the offender is not the victim's parent)
- § 944.06: Incest (where the victim is a minor)
- § 948.06: Incest with a Child
- § 948.095: Sexual Assault of a Child by a School Staff Person or a Person who Works or Volunteers with Children (where the offense involves sexual intercourse or where the victim is under 13)
- § 948.30(1)(a): Abduction of Another's Child
- § 948.30(2)(a): Abduction of Another's Child

Wisconsin does not meet the SORNA requirements in this section.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry. Wisconsin captures some of the required information, with the following exceptions:

- Purported date of birth.
- Driver's license number or ID card.
- Transient and day labor employment information.
- Palmprints.
- Passports and immigration documents.
- Telephone numbers where the person may be reached or which offender regularly uses, including landline and cellular phones.
- Current photographs.
- Professional licenses.
- Purported social security numbers.
- Temporary lodging information.

- Vehicle information, including year, make, model, color, and any registration number or license plate number for any vehicle the person owns or regularly uses, including land vehicles, aircraft, and watercraft, including vehicles used for work or volunteering.

Wisconsin does not meet the SORNA requirements in this section.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Wisconsin meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

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

While Wisconsin meets some of the requirements in this section, the state only requires sex offenders to register within 10 days after the person is placed on probation, supervision, aftercare supervision, conditional release or supervised release. Similarly, if the person is registered as a sex offender in another state, Wisconsin requires that they report for registration within 10 days after the person enters the state to take up residence or begin school, employment or his or her vocation.

Wisconsin 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).

In Wisconsin, anyone convicted of, adjudicated or committed for a violation, solicitation, conspiracy or attempt to commit a violation of any registerable offense on or after December 25, 1993 must register. This also includes people who have been in prison, on probation or parole or in a mental or county correctional institution since December 25, 1993 for a registerable offense. Wisconsin does not require registration for those applicable individuals who reenter the jurisdiction's criminal justice system because of a conviction for another 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.

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 notifies 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.

In Wisconsin, registered sex offenders must report changes in name, address, employment information, and school information to law enforcement, but not in person; sex offenders are not required to update law enforcement of any other changes in registration information. Furthermore, Wisconsin does not require offenders to report 21 days in advance of travel outside the United States.

Because Wisconsin does not require in-person updates to law enforcement and does not require offenders to report 21 days in advance of international travel, Wisconsin 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.

In Wisconsin, if a person has been placed on probation or supervision for a sex offense, they are required to register for 15 years after discharge from the probation or supervision imposed for the sex offense. If the person has been sentenced to prison for a sex offense or placed in a juvenile correctional facility or a secured residential care center for children and youth for a sex offense, they are required to register for 15 years after discharge from parole, extended supervision, or aftercare supervision for the sex offense. If the person has been sentenced to prison for a sex offense and is being released from prison because he or she has reached the expiration date of the sentence for the sex offense, they are required to register for 15 years after release from prison. Individuals who are registered as sex offenders in another jurisdiction and move to Wisconsin are required to register for 10 years (unless they meet the lifetime registration criteria listed below).

Any person who has been convicted (or found not guilty by reason of mental disease or defect) first or second degree sexual assault, first or second degree sexual assault of a child, or sexual assault of a child placed in substitute care, is required to register for life.² Additionally, recidivist sex offenders are required to register for life, as are individuals who have been found to be a sexually violent person.³

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.

² §§ 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 (2).

³ "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence. See Chapter 980: Sexually Violent Person Commitments.

In Wisconsin, registrants must update and verify their registry information at least once per year. Individuals who are required to register for life must update and verify their registry information every 90 days. However, these updates are not required to be in-person with law enforcement.

C. Reduction of Registration Periods

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

In Wisconsin, sex offenders are not allowed reductions in their registration periods.

Because Wisconsin does not register offenders for the appropriate durations or frequency of reporting and does not require in-person verification, Wisconsin 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.

While Wisconsin displays much of the SORNA required information about registered sex offender, several important items of information are not relayed to the public, including:

- Criminal history
- Employer address
- School address
- Vehicle information

Wisconsin 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.

While Wisconsin meets the SORNA law enforcement community notification requirements of this section, the state's automated community notification system to the public does not send email notifications whenever a sex offender commences employment or school attendance within a certain zip code or geographic radius.

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.

Failure to register in Wisconsin is a Class H Felony, which carries a prison sentence of up to six years. However, offenders that fail to register who are required to register based upon a misdemeanor sex offense, and who have not previously violated the requirements, are subject to up to nine months in jail.

These deviations do 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 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.

Wisconsin 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.

Wisconsin meets all of the SORNA requirements in this section.

XV. Tribal Considerations

There is one Indian Tribe that has chosen to adopt SORNA located within the boundaries of Wisconsin: the Menominee Indian Tribe of Wisconsin. The Tribe has been found to have substantially implemented SORNA and has a strong working relationship with the State of Wisconsin.

The Wisconsin Department of Corrections, Sex Offender Registry, has developed an administrative directive to monitor and track the whereabouts of the sex offender registrants, including the individuals required to register due to a conviction by a Tribal Court and/or living on the Menominee Reservation of Wisconsin, and provide information about the whereabouts to victims, law enforcement and the general public. If a registrant reports residence, employment, or school enrollment within the Menominee Reservation area or a change to such information:

- The SOR will immediately update the information into the DOC database and make information immediately available on CIB/NCIC and the law enforcement sex offender registry website.
- The SOR will also communicate with the Menominee Tribal Police, Sex Offender Registry and Notification Program, of that updated information through the SORNA Exchange Portal and through monthly existing communication processes.

The administrative directive indicates that the Wisconsin Sex Offender Registry and Menominee Tribal Police, Sex Offender Registry and Notification Program, will continue to work cooperatively with Menominee County and Shawano County and share information to ensure all sex offenders are registered and tracked.

Conclusion

We encourage Wisconsin 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 Wisconsin 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: Wisconsin Offense Tiering Review

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

In reviewing Wisconsin Revised Statutes, the SMART Office understands that Wisconsin essentially has three categories of registrants:

1. 15 years after discharge from the probation or supervision imposed for the sex offense. If the person has been sentenced to prison for a sex offense or placed in a juvenile correctional facility or a secured residential care center for children and youth for a sex offense, they are required to register for 15 years after discharge from parole, extended supervision, or aftercare supervision for the sex offense. If the person has been sentenced to prison for a sex offense and is being released from prison because he or she has reached the expiration date of the sentence for the sex offense, they are required to register for 15 years after release from prison.
2. Individuals who are registered as sex offenders in another jurisdiction and move to Wisconsin are required to register for 10 years (unless they meet the lifetime registration criteria listed below).
3. Any person who has been convicted (or found not guilty by reason of mental disease or defect) first or second degree sexual assault, first or second degree sexual assault of a child, or sexual assault of a child placed in substitute care, are required to register for life.⁴ Additionally, recidivist sex offenders are required to register for life, as are individuals who have been found to be a sexually violent person.⁵

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 Wisconsin Statutes would require, at a minimum, Tier I registration requirements under SORNA.

- § 940.22(2): Sexual Exploitation by Therapist (where victim is an adult)

⁴ §§ 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 (2).

⁵ "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence. See Chapter 980: Sexually Violent Person Commitments.

- § 940.225(1): First Degree Sexual Assault (where the offense involves sexual contact and the victim is an adult)
- § 940.225(2): Second Degree Sexual Assault (where the offense involves sexual contact and the victim is an adult, and the offense does not fall under (2)(g) or (2)(j))
- § 940.225(3): Third Degree Sexual Assault (where victim is an adult)
- § 940.225(3m): Fourth Degree Sexual Assault
- § 940.30: False Imprisonment (where the victim is a minor and the offender is not the victim's parent)
- § 948.09: Sexual Intercourse with a Child Age 16 or Older
- § 948.10: Exposing Genitals or Pubic Area (where child is forced to expose)
- § 948.12: Possession of Child Pornography
- § 948.30(1)(b): Abduction of Another's Child
- § 948.30(2)(b): Abduction of Another's Child

SORNA 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 Wisconsin Statutes would require, at a minimum, Tier II registration requirements under SORNA.

- § 940.22(2): Sexual Exploitation by Therapist (where victim is 13-17)
- § 940.225(1): First Degree Sexual Assault (where the offense involves sexual contact and the victim is 13-17)
- § 940.225(2): Second Degree Sexual Assault (where the offense involves sexual contact and the victim is 13-17)
- § 940.225(3): Third Degree Sexual Assault (where the offense involves sexual contact and the victim is 13-17)
- § 940.302(2): Human Trafficking (where § 940.302(2)(a)(1b) applies)
- § 948.02(1): First Degree Sexual Assault of a Child (where the offense involves sexual contact and the victim is 13-17)
- § 948.02(2): Second Degree Sexual Assault of a Child (where the offense involves sexual contact and the victim is 13-17)
- § 948.05: Sexual Exploitation of a Child
- § 948.051: Trafficking of a Child
- § 948.07(1-4): Child Enticement
- § 948.075: Use of a Computer to Facilitate a Child Sex Crime
- § 948.08: Soliciting a Child for Prostitution
- § 948.085: Sexual Assault of a Child Placed in Substitute Care (where the victim is 13 or older and the offense involves sexual contact)
- § 948.095: Sexual Assault of a Child by a School Staff Person or a Person who Works or Volunteers with Children (where the victim is 13 or older and the offense involves sexual contact)

SORNA Tier III Offenses

SORNA requires that Tier I offenders register for life and quarterly verify registration information. The following offenses listed in Wisconsin Statutes would require, at a minimum, Tier III registration requirements under SORNA.

- § 940.22: Sexual Exploitation by Therapist (where the victim is under 13)
- § 940.225(1): First Degree Sexual Assault (where the offense involves sexual intercourse or where the victim is under 13)
- § 940.225(2): Second Degree Sexual Assault (where the offense involves sexual intercourse or where the victim is under 13)
- § 940.225(3): Third Degree Sexual Assault (where the offense involves sexual intercourse or where the victim is under 13)
- § 940.31: Kidnapping (if the victim is a minor and the offender is not the victim's parent)
- § 944.06: Incest (where the victim is a minor)
- § 948.02(1): First Degree Sexual Assault of a Child (where the offense involves sexual intercourse or where the victim is under 13)
- § 948.02(2): Second Degree Sexual Assault of a Child (where the offense involves sexual intercourse or where the victim is under 13)
- § 948.025: Engaging in Repeated Acts of Sexual Assault of the Same Child
- § 948.06: Incest with a Child
- § 948.085: Sexual Assault of a Child Placed in Substitute Care (where the offense involves sexual intercourse or where the victim is under 13)
- § 948.095: Sexual Assault of a Child by a School Staff Person or a Person who Works or Volunteers with Children (where the offense involves sexual intercourse or where the victim is under 13)
- § 948.30(1)(a): Abduction of Another's Child
- § 948.30(2)(a): Abduction of Another's Child

Further Review

Wisconsin registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

- § 940.225(2)(g),(j): Second Degree Sexual Assault (where the victim is an adult)
- § 948.055: Causing a Child to View or Listen to Sexual Activity
- § 948.11(2)(a-am): Exposing a Child to Harmful Material or Harmful Descriptions or Narrations
- § 948.13: Child Sex Offender Working with Children