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SORNA Substantial Implementation Review State of South Carolina – Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) thanks the State of South Carolina for its extensive work and 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 revised review of South Carolina’s SORNA substantial implementation materials and has determined South Carolina has substantially implemented SORNA.

In July 2011, the SMART Office issued a SORNA Substantial Implementation Review to South Carolina that found the state had substantially implemented SORNA. In May 2022, the South Carolina Law Enforcement Division (SLED) requested a revised substantial implementation review to assess and describe South Carolina’s sex offender registration laws and policies following passage of HB 4075. In preparing this review, the SMART Office examined revised statutes, policies, and public registry website information. In addition, email and phone correspondence with SLED informed our review.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist – Revised, which contains 10 sections addressing the SORNA requirements. Under each section, we indicate whether South Carolina meets the SORNA requirements of that section or deviates from the SORNA requirements in a way that does not substantially disserve SORNA’s requirements. While South Carolina is encouraged to work toward rectifying any deviations that do not disserve SORNA’s requirements in order to achieve full implementation of SORNA, this is not required to maintain substantial implementation.

This report is an exhaustive review based on the totality of materials received from South Carolina. The report details every area in which South Carolina deviates, but does not substantially disserve the requirements of SORNA. We encourage South Carolina to review the information below, share it with relevant stakeholders and contact the SMART Office to develop a strategy to address these remaining issues. The SMART Office will continue to provide any necessary technical assistance to help South Carolina achieve full implementation. South Carolina will be required to keep the SMART Office informed of its progress in addressing the remaining provisions and annually certify continuing implementation of SORNA.

I. Immediate Notification and Exchange of Information

SORNA requires that when an offender initially registers and/or updates their information in a jurisdiction, that the initial registration information or updated information be immediately sent to each jurisdiction where the offender has to register—where the offender lives, works or goes to school—through the SORNA Exchange Portal or other means, as well as sent to the National Crime Information Center’s National Sex Offender Registry (NCIC/NSOR). Notification must also be provided to appropriate law enforcement agencies, supervision agencies and any agency

responsible for conducting employment-related background checks under 34 U.S.C. § 40102(a) in each jurisdiction where the offender is registered.

South Carolina meets all of the SORNA requirements in this section.

II. Offenses That Must Be Included in the Registry

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

A. South Carolina Offenses

South Carolina includes most of the South Carolina offenses for which SORNA requires registration in its registration scheme. However, South Carolina does not require registration for most attempts and conspiracies and the following South Carolina offenses are not included in South Carolina's registration law as required by SORNA:

- S.C. Code Ann. § 16-3-600(C)(1)(a)(i) Assault and battery in the first degree
- S.C. Code Ann. § 16-3-600(D)(1)(b) Assault and battery in the second degree
- S.C. Code Ann. § 16-3-755 Sexual battery with a student
- S.C. Code Ann. § 16-3-920 Conspiracy to kidnap
- S.C. Code Ann. § 16-15-90 Prostitution¹
- S.C. Code Ann. § 16-15-100 Prostitution²
- S.C. Code Ann. § 16-17-40 Conspiracy

South Carolina also requires offenders who are convicted of a non-registerable South Carolina offense to register if good cause is shown by the prosecution and the presiding judge orders registration as a condition of sentencing.

B. Offenses of Other SORNA Registration Jurisdictions

South Carolina deviates from SORNA in that South Carolina requires registration for any offense that is similar to a registerable South Carolina offense. South Carolina also requires registration if a person would be required to register while residing in the state of conviction for a sex offense committed in that state.

¹ South Carolina statutorily requires registration for trafficking in persons (S.C. Code Ann. § 16-3-2020(C)), which covers similar conduct addressed by this offense, but specifies the victim is a minor.

² *Id.*

C. Federal Offenses

South Carolina deviates from SORNA requirements in that South Carolina includes federal offense convictions in its registration scheme if the offense is similar to a registerable South Carolina offense.

The following offenses require registration under SORNA but do not appear to have equivalent South Carolina offenses.

- 18 U.S.C. § 2245 Offenses resulting in death
- 18 U.S.C. § 2251A Selling or buying of children
- 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. § 2260 Production of sexually explicit depictions of a minor for import into the United States

- 18 U.S.C. § 2424 Failure to file factual statement about alien individual
- 18 U.S.C. § 2425 Use of interstate facilities to transmit information about a minor

However, South Carolina also has a catch-all provision that requires offenders convicted of “any other offense required by . . . SORNA” to register.³ As a result, although the aforementioned offenses do not appear to have equivalent South Carolina offenses, they are still captured under South Carolina’s existing registration scheme because they are registerable offenses under federal SORNA and fall within South Carolina’s catch-all provision.

D. Military Offenses

South Carolina deviates from SORNA requirements in that South Carolina includes military offense convictions in its registration scheme if the offense is similar to a registerable South Carolina offense. However, although there are some military offenses (such as conduct unbecoming) that do not appear to have an equivalent offense under South Carolina law, they are still captured under South Carolina’s existing registration scheme because they are registerable offenses under federal SORNA and fall within South Carolina’s catch-all provision.

E. Foreign Offenses

South Carolina deviates from SORNA requirements in that South Carolina includes foreign convictions in its registration scheme if the offense is similar to a registerable South Carolina offense. However, although there are some foreign offenses that do not appear to have an equivalent offense under South Carolina law they are still captured under South Carolina’s existing registration scheme because they are registerable offenses under federal SORNA and fall within South Carolina’s catch-all provision.

³ See S.C. Code Ann. § 23-3-430(C).

F. Juveniles

South Carolina handles juveniles charged with sex offenses in multiple ways.

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

South Carolina automatically requires juveniles who are 17 years or older at the time they commit an offense which, if committed by an adult, would be a Class A, B, C or D felony, or a felony punishable by a term of imprisonment of 15 years or more, to be prosecuted as adults.⁴ However, juveniles who are 17 years or older at the time they are charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony, or a felony punishable by a term of imprisonment of 10 years or less, may be transferred to adult court if the family court considers it contrary to the best interest of the child or of the public to retain jurisdiction.⁵ Juveniles who are 14, 15 or 16 years of age at the time they are charged with an offense which, if committed by an adult, would be a Class A, B, C or D felony, or a felony punishable by a term of imprisonment of 15 years or more, may be transferred to adult court if, after a full investigation and hearing, the family court considers it contrary to the best interest of the child or of the public to retain jurisdiction.

Juveniles who are 14 years or older who are charged with an offense which, if committed by an adult, provides for a term of imprisonment of 10 years or more and who have previously been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provides for a term of imprisonment of 10 years or more, may be transferred to adult court if the family court considers it contrary to the best interest of the child or of the public to retain jurisdiction.

Additionally, if a petition is filed in family court alleging a juvenile has committed the offense of criminal sexual conduct, the petitioning party may request to have the case transferred to adult court. If the family court judge denies the petition, the petitioner has five days to appeal to adult court, where the adult court may accept jurisdiction or relinquish jurisdiction to the family court. If the adult court accepts jurisdiction, the family court has no further jurisdiction in the matter.

A juvenile prosecuted as an adult of a registerable sex offense is subject to the same registration requirements as an adult.

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

South Carolina requires juveniles to register if they are 14 years of age or older and have been adjudicated delinquent of committing any tier III registerable South Carolina offense. Juveniles who are 14 years of age or older who have been adjudicated delinquent of committing any other registerable South Carolina offense, and juveniles who are 12 or 13 years old who have been adjudicated delinquent of committing any tier III registerable

⁴ S.C. Code Ann. § 63-19-20(1). The majority of serious sex offenses requiring registration of juveniles adjudicated delinquent under SORNA are classified as Class A felonies in South Carolina.

⁵ S.C. Code Ann. § 63-19-1210.

South Carolina offense, may be required to register at the discretion of the family court. In making its determination, the family court must consider the likelihood that the juvenile will reoffend; the age of the juvenile at the time of the offense and adjudication; mitigating factors; aggravating factors, including the age of the victim, use of force, or use of weapons; prior adjudications; and other factors the court considers relevant. Out-of-state juveniles adjudicated delinquent are only required to register in South Carolina, subject to the requirements of the sentencing state, if they are required to register in the sentencing state for a sex offense committed in that state.

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

Courts are required to order juveniles to be electronically monitored if they are adjudicated delinquent of criminal sexual conduct with a minor in the first degree (a tier II offense under federal SORNA if the victim is 13-16 and a tier III offense under federal SORNA if the victim is under 13) or criminal sexual conduct with a minor in the third degree (a tier II offense under federal SORNA if the conduct involves sexual contact and the victim is 13-16 and a tier III offense under federal SORNA if the conduct involves sexual contact and the victim is under 13). Courts may also order electronic monitoring for juveniles adjudicated delinquent of criminal sexual conduct with a minor in the second degree; engaging a child for sexual performance; producing, directing, or promoting sexual performance by a child; assault with intent to commit criminal sexual conduct involving a minor; violations of Article 3, Chapter 15, Title 16 involving a minor; non-parental kidnapping of a minor; or trafficking in persons involving a minor. Courts can also order electronic monitoring as a condition of sentencing if the juvenile commits an offense against a minor.⁶

If a juvenile is adjudicated delinquent of committing a registerable South Carolina offense where the victim is a minor, the court must order as a condition of probation or parole that the juvenile is prohibited from using the internet to access social networking websites and to communicate with other persons or groups for the purpose of promoting sexual relations with persons under the age of 18.

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

⁶ A court cannot order electronic monitoring as a condition of sentencing for an offender who is 18 years of age or younger who engaged in illicit but consensual sexual conduct with another person who is at least 14 years of age.

III. Required Registration Information

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

South Carolina deviates from SORNA requirements in that the following information is not collected:

- DNA (from out-of-state sex offenders)
- Temporary lodging information⁷

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

IV. Where Registration Is Required

SORNA requires the jurisdiction register an offender if the offender was convicted or incarcerated in that jurisdiction. In addition, SORNA requires that the jurisdiction register offenders who live, work or go to school in the jurisdiction.

South Carolina deviates from SORNA requirements in that only South Carolina residents, which includes anyone who remains in South Carolina for a total of 30 days during a 12-month period, are required to register.⁸

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

V. Initial Registration: Generally

SORNA requires registration of an offender who is incarcerated within the jurisdiction before release from imprisonment for the registration offense. Similarly, when an offender is sentenced in the jurisdiction, but not incarcerated, SORNA requires registration within three business days of sentencing. Additionally, 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. Finally, SORNA requires that, during the initial registration process, the jurisdiction inform the offender of their registration duties and require the offender acknowledge in writing that they understand those duties.

South Carolina meets all of the SORNA requirements in this section.

⁷ South Carolina requires registration of temporary lodging information only when offenders are going to be away from their residence, in another county in South Carolina, for 10 or more days. S.C. Code Ann. § 23-3-460(D).

⁸ S.C. Code Ann. § 23-3-430(B).

VI. Initial Registration: Retroactive Classes of Offenders

SORNA applies to sex offenders convicted prior to the enactment of SORNA or its implementation in the jurisdiction, if they are prisoners, supervisees or registrants at the time of implementation, or if they reenter the system because of subsequent criminal convictions.

South Carolina meets all of the SORNA requirements in this section.

VII. Keeping the Registration Current

SORNA requires registered sex offenders immediately appear in person to the registering agency in their jurisdiction of residence to update their name, residence, employment, school attendance and termination of residence. SORNA also requires sex offenders immediately update the registering agency in their jurisdiction of residence about any changes to their 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 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 the offender immediately appear in person to update school-related information.

SORNA also requires that, when an offender intends to travel outside the United States, the offender notify the registering agency in their jurisdiction of residence 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: (1) immediately notify any other jurisdiction where the offender is either registered or is required to register of that updated information; (2) immediately notify the United States Marshals Service; and (3) immediately update NCIC/NSOR.

South Carolina deviates from SORNA requirements in that South Carolina does not require immediate updating of name, vehicle information or phone numbers. However, anyone seeking to file a petition to legally change their name in South Carolina must first notify SLED.⁹ Upon receipt of a request for a name change, SLED is required to notify the court if the individual is required to register as a sex offender and, upon any name change, SLED is required to update its sex offender registry databases to reflect the offender's new name.

South Carolina does not statutorily require offenders to provide notice of international travel, however, SLED's sex offender registration forms require offenders provide 21-day advance notice of international travel and South Carolina requires all South Carolina Sheriffs' Departments notify offenders of their duty to provide advance notice of international travel. If an offender provides notice of international travel, South Carolina Sheriffs' Departments are

⁹ See S.C. Code Ann. § 15-49-20(A).

required to notify SLED and SLED is required to notify INTERPOL, the United States Marshals Service, and any other jurisdictions within three business days.

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

VIII. Offense Tiering/Verification/Appearance Requirements

SORNA requires offenses be classified into three tiers based on the nature and seriousness of the offense, the age of the victim, and the extent of the offender’s recidivism and that the tier of the conviction offense determines the duration of registration and frequency of in-person appearances.

South Carolina previously required all sex offenders to register for life and did not provide offenders with an opportunity to reduce their registration periods. However, in June 2021, the South Carolina Supreme Court held that requiring sex offenders to register for life without an opportunity for judicial review violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution (*Powell v. Keel*, 860 S.E.2d 344 (S.C. 2021)). In response to *Powell v. Keel*, the South Carolina Legislature passed HB 4075 in May 2022. Among the many revisions made by the legislation, it changed South Carolina’s lifetime sex offender registration scheme to a tier-based scheme.

South Carolina’s current registration and notification scheme establishes three tiers of offenses. All sex offenders are required to register for life and an offender’s eligibility for a reduction in registration period will depend on the offender’s tier.

A. Offense Tiering

The SMART Office has reviewed all relevant South Carolina statutes and has identified South Carolina’s classification of these statutes within the tiering policy structure created by SORNA (see the appendix for information about South Carolina’s classification of its offenders and associated registration requirements). South Carolina tiers its statutes in accordance with SORNA, with the following exceptions.

South Carolina classifies the following offenses as tier I offenses requiring lifetime registration with biannual in-person verification and the opportunity to petition for a reduction in registration period after 15 years. These offenses require tier II registration (25 years) with twice-annual in-person verification under SORNA.

- S.C. Code Ann. § 16-3-654 Criminal sexual conduct in the third degree (if no force, fraud, or coercion and victim 13-17)
- S.C. Code Ann. § 16-15-20 Incest (if victim 13-17)
- S.C. Code Ann. § 16-15-120 Buggery (if victim 13-17)^{10*}

¹⁰ This is an offense that, if subject to the Romeo and Juliet exception under SORNA, will not be registerable. Additional South Carolina offenses that may be subject to this exception are denoted in this report with an asterisk (*).

- S.C. Code Ann. § 44-23-1150(C)(1) Sexual misconduct with an inmate, patient, or offender in the first degree (if victim 13-17)
- S.C. Code Ann. § 44-23-1150(C)(2) Sexual misconduct with an inmate, patient, or offender in the second degree (if victim 13-17)

South Carolina classifies the following offenses as tier I offenses requiring lifetime registration with biannual in-person verification and the opportunity to petition for a reduction in registration period after 15 years. These offenses require tier III registration (lifetime) with quarterly in-person verification under SORNA.

- S.C. Code Ann. § 16-3-654 Criminal sexual conduct in the third degree (if force or coercion)
- S.C. Code Ann. § 16-3-654 Criminal sexual conduct in the third degree (if no force or coercion and victim under 13)
- S.C. Code Ann. § 16-15-20 Incest (if victim under 13)
- S.C. Code Ann. § 16-15-120 Buggery (if victim under 13)
- S.C. Code Ann. § 44-23-1150(C)(1) Sexual misconduct with an inmate, patient, or offender in the first degree (if victim under 13)
- S.C. Code Ann. § 44-23-1150(C)(2) Sexual misconduct with an inmate, patient, or offender in the second degree (if victim under 13)

South Carolina classifies the following offenses as tier II offenses requiring lifetime registration with biannual in-person verification and the opportunity to petition for a reduction in registration period after 25 years. These offenses require tier III registration (lifetime) with quarterly in-person verification under SORNA.

- S.C. Code Ann. § 16-3-653 Criminal sexual conduct in the second degree
- S.C. Code Ann. § 16-3-655(B)(1) Criminal sexual conduct with minors in the second degree (if victim under 13)
- S.C. Code Ann. § 16-3-655(C) Criminal sexual conduct with a minor in the third degree (if victim under 13)
- S.C. Code Ann. § 16-3-2020(B)(1)-(3) Trafficking in persons, first, second, and third/subsequent offense (if victim under 13)¹¹
- S.C. Code Ann. § 16-3-2020(C) Trafficking in persons (if victim under 13)

¹¹ South Carolina statutorily requires registration for trafficking in persons (S.C. Code Ann. § 16-3-2020(C)), which covers the same conduct addressed by this offense, but specifies the victim is a minor.

B. Duration of Registration

SORNA requires offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires tier I offenders register for 15 years, tier II offenders register for 25 years and tier III offenders register for life.

South Carolina requires all offenders to register for life, regardless of their offense of conviction. However, juveniles adjudicated delinquent of a registerable sex offense, and adults classified as tier I and tier II offenders in South Carolina, may apply to SLED to reduce their registration periods and, if their application is denied, they may petition the court. Adults classified as tier III offenders in South Carolina are also permitted to petition the court to reduce their registration periods.

C. Frequency of Registration

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

South Carolina requires that all offenders update their registration information in person biannually, irrespective of the tier of the offense of conviction. Individuals classified as tier III offenders under SORNA and individuals designated as sexually violent predators are required to verify their registration information in person every 90 days.

D. Reduction of Registration Periods

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

South Carolina allows juveniles adjudicated delinquent of a registerable sex offense and adults classified as tier I and tier II offenders in South Carolina to apply to SLED for a reduction of their registration period. Adults classified as tier III offenders in South Carolina are ineligible to apply to SLED for a reduction in their registration period.

South Carolina also allows juveniles adjudicated delinquent of a registerable sex offense and adults classified as tier I, tier II, and tier III offenders in South Carolina to petition the court for a reduction in their registration period.

Juveniles adjudicated delinquent of a registerable sex offense and adults classified as tier I offenders in South Carolina may apply to SLED for a reduction of their registration period after 15 years. Adults classified as tier II offenders in South Carolina may apply to SLED after 25 years. Individuals who are required to register due to an out-of-state or federal conviction may also apply to SLED as noted above, however their corresponding tier is determined by the equivalent tier under federal SORNA. Individuals who are required to register because of a conviction in another state or because of a federal conviction must also be eligible to reduce their registration periods under the laws of the jurisdiction where the conviction occurred before they can apply to SLED.

To be eligible to apply to SLED, offenders must have successfully completed all required sex offender treatment programs, must not have been convicted of failure to register within the previous 10 years, must not have been convicted of any additional sexual offenses or violent sexual offenses after being placed on the registry, and must pay a filing fee. If all statutory requirements are met, SLED must grant the application. However, if SLED determines that an offender has been convicted of any additional sexual offenses or violent sexual offenses, has not substantially complied with the statutory requirements, or an objection has been filed by the original prosecuting attorney, SLED must deny the application. If an offender's application is denied, the offender can petition the court or reapply to SLED after five years.

Juveniles adjudicated delinquent of a registerable sex offense and adults classified as tier I offenders in South Carolina may petition the court only after their application to SLED has been denied and after registering for at least 15 years. Adults classified as tier II offenders in South Carolina may petition the court only after their application to SLED has been denied and after registering for 25 years. Adults classified as tier III offenders in South Carolina may also petition the court after 30 years from the date of discharge from incarceration without supervision or termination of active supervision of probation, parole or any other active alternative to incarceration. Individuals who are required to register due to an out-of-state or federal conviction are also permitted to petition the court as noted above. However, their corresponding tier is determined by the equivalent tier under federal SORNA.

Offenders convicted of a registerable South Carolina offense must file their motion in the county in which the underlying conviction occurred and offenders convicted of an out-of-state or federal offense must file the motion in the county in which the offender resides. The court may require that an evaluation be conducted to determine whether the offender poses a foreseeable risk to reoffend. In determining whether to grant the motion, the court must determine by clear and convincing evidence that the offender is no longer a foreseeable risk to reoffend and that it is in the best interest of justice to grant the offender's motion. If an offender's motion is denied, the offender can file another petition five years after the date of the final order.

Because South Carolina's highest court has determined that it violates the Due Process Clause under the Fourteenth Amendment to the U.S. Constitution to require all sex offenders to register for life without an opportunity for judicial review, including offenders classified as tier III offenders in South Carolina, South Carolina deviates from SORNA's duration of registration and reduction of registration periods requirements. However, because *Powell* serves as a practical barrier to South Carolina's ability to meet SORNA's duration of registration and reduction of registration periods requirements, these deviations do not substantially disserve the purposes of SORNA.

IX. Public Registry Website and Community Notification Requirements

SORNA requires 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 published on a jurisdiction's public registry website. Additionally, SORNA requires each jurisdiction disseminate certain initial and updated registration information to schools, public

housing agencies, and social service entities responsible for protecting minors, and the community through an automated notification system.

A. Public Registry Website

SORNA requires offender information be published on the jurisdiction's public registry website within three business days. In addition to being able to search for a specific offender by name, the jurisdiction's sex offender website must also be searchable by ZIP code or geographic radius.

South Carolina operates a public registry website that conforms with SORNA requirements.

B. Community Notification

The jurisdiction's public sex offender registry website must include a function to allow members of the public and organizations to request email notification when sex offenders move into, or start employment or school within, a ZIP code or geographic radius specified by the requester.

South Carolina provides community notification in a manner that conforms with SORNA requirements. South Carolina also requires that each school district, at the beginning of each school year, provide the names and addresses of every sex offender who resides within 1,000 feet of a school bus stop within the school district to parents or guardians of students who board or disembark at such a bus stop. Additionally, law enforcement must notify the principals of public and private schools and the administrators of child day care centers and family day care centers of any offender whose address is within one-half mile of the school or business.

South Carolina meets all of the SORNA requirements in this section.

X. Enforcement of Registration Requirements

SORNA requires that jurisdictions take measures to enforce registration requirements, including penalties for registration violations, and engage in practical procedures for investigating and dealing with such violations.

A. State Penalty

SORNA requires jurisdictions provide a criminal penalty for a sex offender's failure to comply with their registration requirements that includes a maximum imprisonment term that is longer than one year.

South Carolina's penalty for failure to register conforms with SORNA requirements.

B. Failure to Appear for Registration

SORNA requires that when a jurisdiction is notified of a sex offender's intent to live, work or go to school in its jurisdiction, and that offender fails to appear for registration as required,

the receiving jurisdiction must inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

South Carolina's failure to appear procedures conform with SORNA requirements.

C. Absconders

SORNA requires that, when a jurisdiction has information that a sex offender may have absconded, the jurisdiction take certain actions to investigate the absconder and notify various law enforcement agencies.

South Carolina's investigation and notification procedures conform with SORNA requirements.

South Carolina meets all of the SORNA requirements in this section.

Conclusion

South Carolina has performed exceptional work in substantially implementing SORNA and enhancing its sex offender registration and notification system. The SMART Office recommends South Carolina resolve any deviations identified in this review to achieve full implementation of SORNA; however, failing to resolve these deviations will not impact South Carolina's substantial implementation status.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings. Please let us know if we can be of assistance in developing a strategy for addressing and adopting the remaining provisions of SORNA.

Appendix

South Carolina Offense Tiering Policy Review

The SMART Office has reviewed all relevant South Carolina statutes and has identified South Carolina's placement of these statutes within the tiering policy structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act.

In reviewing South Carolina's Code, the SMART Office understands that South Carolina has one broad category of registrants for purposes of its duration of registration and frequency of registration requirements: offenders are generally required to register for life and verify registration information in person biannually. Offenders designated as tier III sex offenders under federal SORNA and offenders designated as sexually violent predators are required to verify registration information in person every 90 days. However, South Carolina establishes three tiers of offenses for purposes of determining an offender's eligibility for a reduction in registration period.

SORNA Tier I Offenses

SORNA requires tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in South Carolina's Code would require, at a minimum, tier I registration requirements under SORNA.

- S.C. Code Ann. § 16-3-600(D)(1)(b) Assault and battery in the second degree
- S.C. Code Ann. § 16-3-755(C)-(D) Sexual battery with a student*
- S.C. Code Ann. § 16-3-910 Kidnapping (if non-parental, victim under 18, and offense involves false imprisonment)
- S.C. Code Ann. § 16-3-920 Conspiracy to kidnap (if non-parental, victim under 18, and offense involves false imprisonment)
- S.C. Code Ann. § 16-15-20 Incest (if victim 18+)
- S.C. Code Ann. § 16-15-90 Prostitution (if victim under 18 and first or second offense)
- S.C. Code Ann. § 16-15-100 Prostitution (if victim under 18 and first or second offense)
- S.C. Code Ann. § 16-15-120 Buggery (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), with a human, and victim 18+)*
- S.C. Code Ann. § 16-15-305(F) Creating, buying, procuring obscene material (if offense involves receipt / possession of child pornography)
- S.C. Code Ann. § 16-15-325 Participation in preparation of obscene material (if offense involves child pornography)

- S.C. Code Ann. § 16-15-385(A)(2) Disseminating harmful material to minors (if offense involves receipt / possession of child pornography)
- S.C. Code Ann. § 16-15-405 Second degree sexual exploitation of a minor (if offense involves receipt / possession of child pornography)
- S.C. Code Ann. § 16-15-410 Third degree sexual exploitation of a minor
- S.C. Code Ann. § 16-17-470(B)(1) Voyeurism, first offense (if offense involves video voyeurism, as defined by 18 U.S.C. § 1801, and victim under 18)
- S.C. Code Ann. § 44-23-1150(C)(1) Sexual misconduct with an inmate, patient, or offender in the first degree (if victim 18+)*
- S.C. Code Ann. § 44-23-1150(C)(2) Sexual misconduct with an inmate, patient, or offender in the second degree (if victim 18+)*

SORNA Tier II Offenses

SORNA requires tier II offenders register for a minimum of 25 years and verify registration information every six months. The following offenses listed in South Carolina’s Code would require, at a minimum, tier II registration requirements under SORNA.

- S.C. Code Ann. § 16-3-600(C)(1)(a)(i) Assault and battery in the first degree (if victim 13-17)
- S.C. Code Ann. § 16-3-655(A)(2) Criminal sexual conduct with a minor in the first degree (if victim 13-16)
- S.C. Code Ann. § 16-3-655(B)(1) Criminal sexual conduct with a minor in the second degree (if victim 13 or 14)*
- S.C. Code Ann. § 16-3-655(B)(2) Criminal sexual conduct with a minor in the second degree (if victim 14-16)*
- S.C. Code Ann. § 16-3-655(C) Criminal sexual conduct with a minor in the third degree (if offense involves sexual contact, as defined by 18 U.S.C. § 2246(3), and victim 13-16)*
- S.C. Code Ann. § 16-3-755(B) Sexual battery with a student (if victim 13-17)*
- S.C. Code Ann. § 16-3-810 Engaging a child for a sexual performance
- S.C. Code Ann. § 16-3-820 Producing, directing, or promoting sexual performance by a child
- S.C. Code Ann. § 16-3-2020(B)-(C) Trafficking in persons (if victim 13-17)
- S.C. Code Ann. § 16-15-20 Incest (if victim 13-17)
- S.C. Code Ann. § 16-15-90 Prostitution (if victim under 18 and third or subsequent offense)
- S.C. Code Ann. § 16-15-100 Prostitution (if victim under 18 and third or subsequent offense)
- S.C. Code Ann. § 16-15-120 Buggery (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), with a human, and victim 13-17)*

- S.C. Code Ann. § 16-15-305(A) Disseminating obscenity (if offense involves production / distribution of child pornography)
- S.C. Code Ann. § 16-15-305(F) Creating, buying, procuring obscene material (if offense involves production of child pornography)
- S.C. Code Ann. § 16-15-335 Permitting minor to engage in any act under article prohibiting obscenity, material harmful to minors, child exploitation, and child prostitution
- S.C. Code Ann. § 16-15-342 Criminal solicitation of a minor
- S.C. Code Ann. § 16-15-345 Disseminating obscene material to minor
- S.C. Code Ann. § 16-15-355 Disseminating obscene material to minor 12 and under
- S.C. Code Ann. § 16-15-385(A)(1) Disseminating harmful material to minors (if offense involves production / distribution of child pornography)
- S.C. Code Ann. § 16-15-387 Employment of minor under 18 to appear in public in state of sexually explicit nudity
- S.C. Code Ann. § 16-15-395 First degree sexual exploitation of a minor
- S.C. Code Ann. § 16-15-405 Second degree sexual exploitation of a minor (if offense involves production / distribution of child pornography)
- S.C. Code Ann. § 16-15-415 Promoting prostitution of minor
- S.C. Code Ann. § 16-15-425 Participating in prostitution of minor
- S.C. Code Ann. § 16-17-470(B)(2) Voyeurism, second or subsequent offense (if offense involves video voyeurism, as defined by 18 U.S.C. § 1801, and victim under 18)
- S.C. Code Ann. § 16-17-470(C) Aggravated voyeurism (if offense involves child pornography)
- S.C. Code Ann. § 44-23-1150(C)(1) Sexual misconduct with an inmate, patient, or offender in the first degree (if victim 13-17)*
- S.C. Code Ann. § 44-23-1150(C)(2) Sexual misconduct with an inmate, patient, or offender in the second degree (if victim 13-17)*

SORNA Tier III Offenses

SORNA requires tier III offenders register for life and verify registration information every three months. The following offenses listed in South Carolina’s Code would require, at a minimum, tier III registration requirements under SORNA.

- S.C. Code Ann. § 16-3-600(C)(1)(a)(i) Assault and battery in the first degree (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2)(D), and victim under 16)

- S.C. Code Ann. § 16-3-600(C)(1)(a)(i) Assault and battery in the first degree (if offense involves sexual contact, as defined by 18 U.S.C. § 2246(3), and victim under 13)
- S.C. Code Ann. § 16-3-615 Sexual battery of spouse
- S.C. Code Ann. § 16-3-652 Criminal sexual conduct in the first degree
- S.C. Code Ann. § 16-3-653 Criminal sexual conduct in the second degree
- S.C. Code Ann. § 16-3-654 Criminal sexual conduct in the third degree
- S.C. Code Ann. § 16-3-655(A)(1) Criminal sexual conduct with a minor in the first degree
- S.C. Code Ann. § 16-3-655(A)(2) Criminal sexual conduct with a minor in the first degree (if victim under 13)
- S.C. Code Ann. § 16-3-655(B)(1) Criminal sexual conduct with a minor in the second degree (if victim under 13)
- S.C. Code Ann. § 16-3-655(C) Criminal sexual conduct with a minor in the third degree (if offense involves sexual contact, as defined by 18 U.S.C. § 2246(3), and victim under 13)
- S.C. Code Ann. § 16-3-658 Criminal sexual conduct when victim is spouse
- S.C. Code Ann. § 16-3-910 Kidnapping (if non-parental, victim under 18, and offense involves kidnapping, as defined by 18 U.S.C. § 1201)
- S.C. Code Ann. § 16-3-920 Conspiracy to kidnap (if non-parental, victim under 18, and offense involves kidnapping, as defined by 18 U.S.C. § 1201)
- S.C. Code Ann. § 16-3-2020(B)-(C) Trafficking in persons (if victim under 13)
- S.C. Code Ann. § 16-15-20 Incest (if victim under 13)
- S.C. Code Ann. § 16-15-100 Prostitution (if by force or threat of force and third or subsequent offense)
- S.C. Code Ann. § 16-15-120 Buggery (if offense involves a sexual act, as defined by 18 U.S.C. § 2246(2), with a human, and victim under 13)
- S.C. Code Ann. § 44-23-1150(C)(1) Sexual misconduct with an inmate, patient, or offender in the first degree (if victim under 13)
- S.C. Code Ann. § 44-23-1150(C)(2) Sexual misconduct with an inmate, patient, or offender in the second degree (if victim under 13)

Further Review

In reviewing the statutes South Carolina cited as registerable offenses under its registration scheme, the SMART Office noted the following SORNA-required offenses are missing from those statutes.

- S.C. Code Ann. § 16-3-600(C)(1)(a)(i) Assault and battery in the first degree

- S.C. Code Ann. § 16-3-600(D)(1)(b) Assault and battery in the second degree
- S.C. Code Ann. § 16-3-755 Sexual battery with a student*
- S.C. Code Ann. § 16-3-920 Conspiracy to kidnap
- S.C. Code Ann. § 16-3-1060 Receipt of compensation for relinquishing custody of child for adoption

- S.C. Code Ann. § 16-15-90 Prostitution
- S.C. Code Ann. § 16-15-100 Prostitution
- S.C. Code Ann. § 16-15-250 Communicating obscene messages to other persons without consent

- S.C. Code Ann. § 16-17-40 Conspiracy

In addition, South Carolina registers the following offenses, which—without the commission of (or the attempt or conspiracy to commit) a sexual offense—SORNA does not require registration for, and registration thereof exceeds SORNA’s minimum standards. However, registration of these offenses in no way disserves the purposes of SORNA’s requirements.

- S.C. Code Ann. § 16-3-656 Assault with intent to commit criminal sexual conduct
- S.C. Code Ann. § 16-15-130 Indecent exposure¹²
- S.C. Code Ann. § 16-15-305(G) Advertising or promoting sale of obscene material
- S.C. Code Ann. § 16-15-315 Requiring receipt of obscene material for resale
- S.C. Code Ann. § 16-15-365 Exposure of private parts in lewd and lascivious manner
- S.C. Code Ann. § 16-15-385(B) Exhibiting harmful performance to a minor
- S.C. Code Ann. § 16-17-470(A) Eavesdropping, peeping
- S.C. Code Ann. § 44-53-370 Administering, distributing, dispensing, delivering a controlled substance with intent to commit kidnapping and/or certain sex offenses

¹² This offense is only registerable if the court makes a specific finding on the record that the convicted person should register as a sex offender.