Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Final Guidelines

Background

1. **What does the term "SORNA" mean?**
2. **What is the Federal role in the administration of SORNA?**
3. **What is the SMART Office?**
4. **What are the final guidelines?**
5. **What jurisdictions are included under SORNA?**
6. **Who is required to register under SORNA's standards?**
7. **What is considered a sex offense under SORNA?**
8. **What is a "conviction" under SORNA?**
9. **What are some key definitions under SORNA?**
10. **Does the Adam Walsh Act place restrictions on where sex offenders can live, work, go to school or loiter?**
11. **How does SORNA handle offenses that involve consensual sexual conduct?**

Substantial Implementation

12. **What is substantial implementation?**
13. **When is the deadline for substantial implementation?**
14. **What are the consequences for jurisdictions that fail to substantially implement SORNA by July 27, 2009?**
15. **What do jurisdictions need to do in order to comply with the SORNA tiering system?**

Tribal

16. **What are the additional consequences for federally recognized Indian tribes that fail to substantially implement SORNA by July 27, 2009?**
17. **What if the reservation of a federally-recognized tribe is in more than one state?**
18. **Is there a model SORNA tribal/tribal or tribal/state cooperative agreement?**
19. **Can tribes collaborate with other tribes or the states as they work to implement SORNA?**

Registry Information

20. **What information is required in jurisdictions' sex offender registries?**
21. **What are the jurisdictions required to do with the collected information about sex offenders?**

22. **What information must be available to the public through public websites?**
23. **Which information is prohibited from being available on public websites?**
24. **Should sex offender e-mail addresses and phone numbers be included on public websites?**
25. **What entities must registry information be shared with and what information must be shared?**

Registration

26. **In which jurisdiction must sex offenders register?**
27. **When must initial registration be carried out?**
28. **What are the requirements for keeping registry information current?**
29. **How often must a registered sex offender appear in person to update his or her registration information?**
30. **What changes of information require in-person appearances to update?**
31. **What is the minimum required duration of registration?**
32. **Are certain classes of sex offenders allowed to reduce the time of their registration requirement?**

Failure to Register

33. **Are jurisdictions required to have a failure to register statute?**
34. **What is the federal penalty for failure to register?**
35. **Can a non-federally convicted sex offender be prosecuted in the federal system for failure to register?**

Individual Examples

36. **If a convicted sex offender has fulfilled his or her pre-SORNA registration requirements, is he or she required to register under SORNA?**
37. **If a sex offender has a job that requires travel to other jurisdictions, where is he or she required to register?**
38. **If a convicted sex offender lives in one jurisdiction, but works or goes to school in another jurisdiction, where is registration required?**
39. **If a sex offender is going to be away from his or her registered residence address for 7 or more days, what must the sex offender do be remain in compliance?**

Miscellaneous

40. **Will jurisdictions receive any assistance in updating their websites to assure compliance with SORNA?**

41. **Will jurisdictions receive any technical assistance in the implementation of SORNA?**
42. **Are the provisions of SORNA retroactive?**
43. **How are juveniles treated under SORNA?**
44. **How are foreign convictions and tribal convictions treated under SORNA?**
45. **Do jurisdictions have to make statutory changes to substantially implement SORNA?**
46. **For purposes of reducing a registration requirement under the "clean record" exception, what does it mean to say a sex offender treatment program is "certified by a jurisdiction"?**

Background

1. What does the term "SORNA" mean?

SORNA refers to the Sex Offender Registration and Notification Act which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). SORNA provides a comprehensive set of minimum standards for sex offender registration and notification in the United States. SORNA aims to close potential gaps and loopholes that existed under prior law and generally strengthens the nationwide network of sex offender registration and notification programs. SORNA:

- Extends the jurisdictions in which registration is required beyond the 50 states, the District of Columbia, and the principal U.S. territories, to include also federally recognized Indian tribes.
- Incorporates a more comprehensive group of sex offenders and sex offenses for which registration is required.
- Requires registered sex offenders to register and keep their registration current in each jurisdiction in which they reside, work, or go to school.
- Requires sex offenders to provide more extensive registration information.
- Requires sex offenders to make periodic in-person appearances to verify and update their registration information.
- Expands the amount of information available to the public regarding registered sex offenders.
- Makes changes in the required minimum duration of registration for sex offenders.

2. What is the Federal role in the administration of SORNA?

The Federal Government is working to assist with the implementation of SORNA and protect the public from sexual abuse and exploitation through:

- Stepped-up federal investigation and prosecution efforts to assist jurisdictions in enforcing sex offender registration requirements;
- New statutory provisions for the National Sex Offender Registry and the Dru Sjodin National Sex Offender Public Website that compile information obtained from registration programs across the country and make it readily available to law enforcement or the public;
- Federal development of software tools, which jurisdictions will be able to use to facilitate the operation of their registration and notification programs in conformity with the SORNA standards; and
- Establishment of the SMART Office to administer the national standards for sex offender registration and notification and to assist jurisdictions in their implementation efforts.

3. What is the SMART Office?

SORNA established the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), a component of the Office of Justice Programs within the U.S. Department of Justice. The SMART Office is authorized by law to administer the standards for sex offender registration and notification that are set forth in SORNA. It is further authorized to cooperate with and provide assistance to states, local governments, tribal governments, and other public and private entities in relation to sex offender registration and notification and other measures for the protection of the public from sexual abuse or exploitation. The SMART Office is a key federal partner and resource for jurisdictions as they continue to develop and strengthen their sex offender registration and notification programs.

4. What are the Final Guidelines?

The Guidelines provide all jurisdictions with guidance, explanation and advice regarding the administration and implementation of SORNA. The Attorney General has issued these Guidelines to promote and assist in the implementation of the SORNA standards.

5. What jurisdictions are included under SORNA?

The 50 States, the District of Columbia, the five principal U.S. territories, and federally recognized Indian tribes that elect to function as registration jurisdictions are all defined as "jurisdictions" under SORNA. "Jurisdiction", as used by SORNA, does not include counties, cities, towns, or other political subdivisions located within states, tribes or territories. However, this definition does not limit the ability of states, tribes or territories to carry out these functions through their political subdivisions or other entities within the jurisdiction.

See Parts II.A and III of the Final Guidelines for more detail.

6. Who is required to register under SORNA's standards?

SORNA refers to the persons required to register under its standards as "sex offenders," and SORNA defines "sex offender" to mean "an individual who was convicted of a sex offense."

7. What is considered a sex offense under SORNA?

The convictions for which SORNA requires registration include convictions for sex offenses by any U.S. jurisdiction, including convictions for sex offenses under federal, military, state, territorial, tribal or local law. Foreign convictions are also covered if certain conditions are satisfied.

Generally speaking, the following are considered sex offenses under SORNA:

- SEXUAL ACTS AND SEXUAL CONTACT OFFENSES. These include criminal offenses that have an element involving a sexual act or sexual contact with another. The offenses covered include all sexual offenses whose elements involve: (i) any type or degree of genital, oral, or anal penetration, or (ii) any sexual touching of or contact with a person's body, either directly or through the clothing.

- SPECIFIED OFFENSES AGAINST MINORS. A criminal offense against a minor that involves any of the following:
    - Non-Parental Kidnapping
    - Non-Parental false imprisonment
    - Solicitation to engage in sexual conduct
    - Use in a sexual performance
    - Solicitation to practice prostitution
    - Video voyeurism
    - Possession, production, or distribution of child pornography
    - Criminal sexual conduct involving a minor
    - Use of the internet to facilitate criminal sexual conduct involving a minor
    - Any conduct that by its nature is a sex offense against a minor

- SPECIFIED FEDERAL OFFENSES. These include the following specific offenses:

    - 18 U.S.C. §1591 (Sex Trafficking of Children)
    - 18 U.S.C. §2241 (Aggravated Sexual Abuse)
    - 18 U.S.C. §2242 (Sexual Abuse)
    - 18 U.S.C. §2243 (Sexual Abuse of a Minor or Ward)
    - 18 U.S.C. §2244 (Abusive Sexual Contact)
    - 18 U.S.C. §2245 (Offenses Resulting in Death)
    - 18 U.S.C. §2251 (Sexual Exploitation of Children)
    - 18 U.S.C. §2251A (Selling or Buying of Children)
    - 18 U.S.C. §2252 (Material Involving the Sexual Exploitation of Minors)
    - 18 U.S.C. §2252A (Material Containing Child Pornography)
    - 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 in to the United States)
    - 18 U.S.C. §2421 (Transportation of a Minor for Illegal Sexual Activity)
    - 18 U.S.C. §2422 (Coercion and Enticement 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)
- 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

- SPECIFIED MILITARY OFFENSES. These include sex offenses under the Uniform Code of Military Justice, as specified by the Secretary of Defense. These offenses are primarily located at 28 C.F.R. §571.72(b).

- ATTEMPTS AND CONSPIRACIES. These include attempts and conspiracies to commit offenses that are otherwise covered by the definition of "sex offenses."

See Part IVA-D of the Final Guidelines for more detail.

8. What is a "conviction" under SORNA?

A sex offender is "convicted" for SORNA purposes if the sex offender has been subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of conviction information, but does not deprive the conviction of continuing legal validity, does not change its status as a "conviction" for purposes of SORNA.

"Convictions" for SORNA purposes include convictions of juveniles who are prosecuted as adults. It does not include juvenile delinquency adjudications, **except** under the circumstances specified in 42 U.S.C. §16911(8). For a detailed explanation of this requirement see FAQ #43.

See Part IVA of the Final Guidelines for more detail.

9. What are some key definitions under SORNA?

a. **"Employee":** An individual who is self-employed or works for any other entity, whether compensated or not.

b. **"Habitually Lives":** Includes places in which the sex offender lives with some regularity. A sex offender 'habitually lives' in the relevant sense in any place in which the sex offender lives for at least 30 days. Jurisdictions may specify the manner of their choosing the application of the 30-day standard to sex offenders whose presence in the jurisdiction is intermittent but who live in the jurisdiction for 30 days in the aggregate over some longer period of time.

c. **"Imprisonment":** Refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence

d. **"Jurisdiction":** Refers to the 50 States, the District of Columbia, the five principal U.S. territories -- i.e., the Commonwealth of Puerto

Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands -- and Indian tribes that elected to function as jurisdictions under SORNA § 127.

e. **"Resides":** Refers to the location of the individual's home or other place where the individual habitually lives.

f. **"Student":** An individual who enrolls in or attends an educational institution (whether public or private) including secondary schools, trade or professional schools, and institutions of higher education.

g. **"This Title":** References to "this title" in sections 124 and 125 function as a shorthand for Title 1, SORNA (Sex Offender Registration and Notification Act), not the entirety of the Adam Walsh Act.

10. Does the Adam Walsh Act place restrictions on where sex offenders can live, work, go to school or loiter?

No. Residency restrictions and safety zones are **NOT** part of the Adam Walsh Act. All such restrictions are the result of jurisdictional or local legislation, not federal law or the Adam Walsh Act. Numerous jurisdictions and local entities do currently restrict sex offenders from living by or being present within certain areas (e.g., within a certain distance of schools, parks or playgrounds). All inquiries regarding residency restrictions or safety zones are a matter to be addressed at the jurisdictional and local level.

11. How does SORNA handle offenses that involve consensual sexual conduct?

SORNA section 111(5)(C) addresses the minimum standards for requiring sex offender registration for consensual sexual conduct under the Adam Walsh Act. SORNA does **NOT** require registration in the following situations: 1) If both participants are adults, and neither is under the custodial authority of the other (e.g., inmate/prison guard) and the conduct was consensual, then this conduct does not constitute a registerable sex offense for purposes of the Adam Walsh Act. 2) With respect acts involving at least one minor (person under 18) who engages in consensual sexual conduct, the following minimum standards apply: Where both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act. In all situations, jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct.

Substantial Implementation

12. What is substantial implementation?

The standard of "substantial implementation" is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the Final Guidelines. SORNA provides a floor, not a ceiling, for sex offender notification and registration programs. Jurisdictions are free to exceed the minimum standards of SORNA, but a jurisdiction may

not fall below the requirements of SORNA. Jurisdictions are free to implement SORNA in any manner that meets the minimum requirements.

See Part IIB and E of the Final Guidelines for more detail.

13. When is the deadline for substantial implementation?

The deadline for substantial implementation is July 27, 2009. The SMART Office requests that submissions establishing compliance with the SORNA requirements or requests for extensions be received by the SMART Office by April 27, 2009. If a jurisdiction is requesting an extension, the submission to the SMART Office should include a description of the jurisdiction's implementation efforts, and an explanation as to why an extension is needed. Up to two 1-year extensions may be allowed. Jurisdictions submitting submissions for substantial compliance may in tandem submit a request for a time extension.

See Part IIE of the Final Guidelines for more detail.

14. What are the consequences for jurisdictions that fail to substantially implement SORNA by July 27, 2009?

States, tribes, and territories that fail to substantially implement SORNA by July 27, 2009 (and have not been granted a time extension) are subject to a 10% reduction in funding under 42 U.S.C. §3750 et seq. ("Byrne Justice Assistance Grant" funding).

The additional consequences for Indian Tribes that fail to substantially implement SORNA by July 27, 2009 are detailed below.

See Parts IIA and IIE of the Final Guidelines for more detail.

15. What do jurisdictions need to do in order to comply with the SORNA tiering system?

The use of the "tier" classifications in SORNA relates to substance, not form or terminology. Thus, to implement the SORNA requirements, jurisdictions do not have to label their sex offenders as "tier I," "tier II," and "tier III," and do not have to adopt any other particular approach to labeling or categorization of sex offenders. Rather, the SORNA requirements are met as long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the same minimum duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier.

Tier I: Predicate offenses include whatever offenses do not support a higher classification, such as misdemeanor registration offenses and child pornography possession.

Tier II: Predicate offenses include most felonious sexual abuse or sexual exploitation crimes involving victims who are minors.

Tier III: Predicate offenses generally encompass sexual assaults involving sexual acts regardless of victim age, sexual contact offenses against children below the age of 13, nonparental kidnapping of minors, and attempts or conspiracies to commit such offenses.

See Part V of the Final Guidelines for more detail.

Tribal

16. What are the additional consequences for Indian Tribes that fail to implement by July 27, 2009?

All jurisdictions including tribes have until July 27, 2009, to be in substantial compliance. If substantial compliance has not been achieved by the jurisdiction, the Attorney General may grant, at the request of a jurisdiction, up to two one-year extensions on the compliance deadline. (See Sec. 124 of SORNA)

Section 127(a)(2)(C) of SORNA also provides that if "the Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time" then the sex offender registry function may be delegated to the state.

17. What if the reservation of a federally-recognized tribe is in more than one state?

If a tribe's land is in part subject to state law enforcement jurisdiction under 18 U.S.C. § 1162 and in part outside of the areas subject to 18 U.S.C. § 1162, then: (i) sex offender registration and notification functions are automatically delegated to the relevant State in the portion of the tribal land subject to 18 U.S.C. § 1162, and (ii) the tribe has a choice between functioning as a jurisdiction or delegating registration and notification functions to the State in the portion of its land that is not subject to 18 U.S.C. § 1162.

18. Is there a model or template SORNA tribal/tribal or tribal/state cooperative agreement?

To date (July 2008), the SMART Office is unaware of any jurisdiction that has fully complied with the requirements of SORNA. Similarly, no jurisdiction has submitted a model or template SORNA tribal/tribal or tribal/state cooperative agreement. The SMART Office will soon post a sample SORNA cooperative agreement at http://www.ojp.usdoj.gov/smart.

19. Can tribes collaborate with other tribes or the states as they work to implement SORNA?

Yes. With respect to Indian tribes, SORNA recognizes that tribes may vary in their capacities and preferences regarding the discharge of sex offender registration and notification functions, and accordingly section 127 of SORNA has special provisions governing the treatment of Indian tribes as jurisdictions or the delegation of registration and notification functions to the States.

See Part III of the Final Guidelines for more detail.

Registry Information

20. What information is required in jurisdictions' sex offender registries?

The following information is required to be placed in a jurisdiction's sex offender registry:

- Criminal History
- Date of Birth
- DNA Sample
- Driver's License or Identification Card
- Employer Information
- Fingerprints
- Internet Identifiers
- Name
- Palm Prints
- Passport and Immigration Documents
- Phone Numbers
- Photograph
- Physical Description
- Professional Licensing Information
- Residence Information
- School Information
- Social Security Number
- Temporary Lodging Information
- Text of Registration Offense
- Vehicle Information

See Part VI of the Final Guidelines for more detail.

21. What are jurisdictions required to do with the collected information about sex offenders?

SORNA requires the immediate sharing of information among jurisdictions and specified entities, and the posting of much of the information on public sex offender registries.

See Part VII of the Final Guidelines for more detail.

22. What information must be available to the public through public websites?

Below is a list of the types of registration information that jurisdictions must include on their public sex offender websites to satisfy the requirements for SORNA implementation. The list of informational items that jurisdictions must include on their public sex offender websites is as follows:

- **Current Offense**: The sex offense for which the offender is currently required to register and any other sex offense for which the sex offender has been convicted.
- **Employer address**: The address of any place where the sex offender is an employee.
- **Name:** The name of the sex offender, including any aliases.
- **Photograph:** A current photograph of the offender.
- **Physical description**: A physical description of the offender.
- **Resident Address: The address** of the sex offender, including any information about where the offender "habitually lives".
- **School address:** The address of any place where the sex offender attends school.
- **Vehicle(s) license plate number and description.**

The foregoing list remains subject to the discretionary authority of jurisdictions under section 118(c)(1) to exempt information about a tier I sex offender convicted of an offense other than a specified offense against a minor.

See Part VII.A of the Final Guidelines for more detail.

23. Which information is prohibited from being available on public websites?

Jurisdictions **must** exempt four types of information from disclosure. These exemptions only constrain jurisdictions in relation to the information made available on their publicly accessible sex offender websites. It does not limit the discretion of jurisdictions to disclose these types of information in other contexts, such as to law enforcement. The mandatory exempted four types of information are:

- The victim's identity,
- The Social Security number of the sex offender,

- Any reference to arrests of the sex offender that did not result in conviction, and
- Passport and immigration document numbers.

There are also four optional exemptions, which apply to information that jurisdictions have the discretion to exempt from their public websites. These are:

- Any information about a tier I sex offender convicted of an offense other than a specified offense against a minor.
- The name of an employer of the sex offender,
- The name of an educational institution where the sex offender is a student,
- Any other information which the Attorney General allows to be exempted.

As noted, these exclusions are discretionary. Jurisdictions are free to include these types of information on their sex offender websites if they are so inclined.

See Part VII.A of the Final Guidelines for more detail.

24. Should sex offender e-mail addresses and phone numbers be included on public websites?

Posting phone numbers and email addresses of sex offenders on public websites in the same manner as other information is problematic. The public availability of this type of information could allow sex offenders to network with one another, reinforcing negative behavior and providing opportunities for coordinated criminal activity.

On the other hand, appropriately designed forms of access to offender email addresses and phone numbers may further the public safety objectives of sex offender registration and notification. For example, the operators of Internet social networking services that serve children may wish to check the e-mail addresses of individuals on their user lists to detect registered sex offenders who are attempting to use their services to contact children. Likewise, a parent may wish to check whether the e-mail address or phone number of an unknown individual who is communicating with his or her child belongs to a registered sex offender.

Jurisdictions are therefore encouraged to include a function on their public websites that allows members of the public to enter an e-mail address or phone number and find out whether that e-mail address or phone number is registered to a sex offender.

The Department of Justice is currently developing software resources for jurisdictions to support this type of "reverse lookup" function for email addresses, and plans to include this type of function with nationwide scope on the national sex offender public registry.

See Part VII.A of the Final Guidelines for more detail.

25. What entities must registry information be shared with and what information must be shared?

After a sex offender registers or updates a registration, the information in a registry (other than information exempted from disclosure by the Attorney General) must be provided to various specified entities and individuals. These include:

- National databases.
- Law enforcement and supervision agencies.
- Any jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.
- Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993.
- Each school and public housing agency in each area in which the sex offender resides, is an employee, or is a student.
- Social service entities responsible for protecting minors in the child welfare system.
- Volunteer organizations in which contact with minors or other vulnerable individuals might occur.
- Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

The requirements in the list above for sharing information among jurisdictions and with certain governmental entities (such as law enforcement agencies) are subject to special standards and procedures described in the Final Guidelines.

With respect to schools, public housing, social service, and volunteer organizations, as well as any request for notification, these information dissemination objectives can be achieved by incorporating appropriate notification functions into the sex offender websites that are similar to measures currently used by some jurisdictions. Specifically, a jurisdiction will be deemed to have satisfied the requirements of SORNA in this regard if it adopts an automated notification system which incorporates substantially the following features:

- The information required to be included on sex offender websites is posted on the jurisdiction's sex offender website within three business days.

- The jurisdiction's sex offender website includes a function under which members of the public and organizations can request notification when sex offenders commence residence, employment, or school attendance within zip code or geographic radius areas specified by the requester, where the requester provides an e-mail

address to which the notice is to be sent.

- Upon posting on the jurisdiction's sex offender website of new residence, employment, or school attendance information for a sex offender within an area specified by the requester, the system automatically sends an e-mail notice to the requester which identifies the sex offender sufficiently that the requester can then access the jurisdiction's website and view the information about the sex offender on the website.

The Department of Justice is currently developing software resources to support an automated email notification system that will be available to all registry jurisdictions.

See Part VII.B of the Final Guidelines for more detail.

Registration

26. In which jurisdictions must sex offenders register?

SORNA requires sex offenders to register and keep their registration current in each jurisdiction in which they reside, are employed, or attend school. A sex offender must also initially register in the jurisdiction in which convicted if it is different from the jurisdiction of residence. Jurisdictions' registration programs must incorporate theses requirements to implement SORNA.

See Part VIII of the Final Guidelines for more detail.

27. When must initial registration be carried out?

Jurisdictions must register incarcerated sex offenders before their release from imprisonment for the registration offense or, in case of a non-imprisonment sentence, within three business days of sentencing for the registration offense.

See Part IX of the Final Guidelines for more detail.

28. What are the requirements for keeping registry information current?

A sex offender must, not later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction in which the sex offender is required to register and inform that jurisdiction of all changes in the information required for that sex offender in the sex offender registry. This information must immediately be provided to all other jurisdictions in which the sex offender is required to register. Jurisdictions must also require a sex offender to provide notice if he or she is leaving the jurisdiction prior to the move; the sex offender must provide information about the jurisdiction to which he or she is going.

See Part X of the Final Guidelines for more detail.

29. How often must a registered sex offender appear in person to update his or her registration information?

A sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that sex offender is required to be registered not less frequently than:

- Annually for a tier I sex offender,
- Every six months for a tier II sex offender, and
- Every three months for a tier III sex offender.

Sex offenders must carry out this schedule of personal appearances in all jurisdictions where they reside, are employed and attend school. As with other SORNA requirements, jurisdictions may require in-person appearances by sex offenders with greater frequency than the minimum required by SORNA.

See Part XI of the Final Guidelines for more detail.

30. What changes of information require in-person appearances to update?

A sex offender must, not later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction in which the sex offender is required to register and inform that jurisdiction of all changes in the information required for that sex offender in the sex offender registry.

31. What is the minimum required duration of registration?

SORNA specifies the minimum required duration of sex offender registration for tier I sex offenders to be 15 years, for tier II sex offenders to be 25 years, and for tier III sex offenders to register for life. The registration period begins to run upon release from custody for a sex offender sentenced to incarceration for the registration offense, or in the case of non-incarcerated sex offenders, at the time of sentencing for the sex offense.

32. Are certain classes of sex offenders allowed to reduce the time of their registration requirement?

Yes. SORNA allows jurisdictions to reduce the registration period for a tier I sex offender by 5 years after the sex offender maintains a clean record for 10 years and to terminate registration for a sex offenders who is required to register under SORNA based on juvenile delinquency adjudication after the sex offender maintains a clean record for 25 years.

Achieving a clean record means the sex offender must fulfill the following requirements:

- Not be convicted of any offense for which imprisonment for more than one year may be imposed,
- Not be convicted of any sex offense regardless of the penalty,
- Successfully complete any periods of supervised release, probation, and parole, and
- Successfully complete an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

See Part XII of the Final Guidelines for more detail.

Failure to Register

33. Are jurisdictions required to have a failure to register statute?

Yes. SORNA requires jurisdictions (other than Indian tribes) to provide a criminal penalty that includes a maximum term of imprisonment greater than one year for the failure of a sex offender to comply with the SORNA requirements. Hence, a jurisdiction's implementation of SORNA includes having a failure-to-register offense for which the maximum authorized term of imprisonment exceeds a year. Indian Tribes are also required to have a failure to register statute, though the maximum term of imprisonment, by definition, will not exceed one year.

See Part XIII of the Final Guidelines for more detail.

34. What is the federal penalty for failure to register?

Under 18 U.S.C. §2250, the federal failure-to-register offense, a federal criminal penalty of up to 10 years of imprisonment exists for sex offenders required to register under SORNA who knowingly fail to register or update a registration as required where circumstances supporting federal jurisdiction exist, such as interstate or international travel or travel on or off an Indian reservation by a sex offender, or conviction of a federal sex offense for which registration is required.

See Part XIII of the Final Guidelines for more detail.

35. Can a non-federally convicted sex offender be prosecuted in the federal system for failure to register?

Yes. If a sex offender convicted or adjudicated delinquent in a jurisdictions court is required to register under SORNA, and knowingly fails to register or update a registration as required, and the sex offender engages in interstate or international travel or enter or leaves or resides in Indian country, then the offender can be prosecuted under 18 U.S.C. §2250, the federal failure-to-register offense.

See Part XIII of the Final Guidelines for more detail.

Individual Examples

36. If a convicted sex offender has fulfilled his or her pre-SORNA registration requirements, is the sex offender required to register under SORNA?

With respect to sex offenders with pre-SORNA or pre-SORNA-implementation convictions who remain in the prisoner, supervision, or registered sex offender populations at the time of implementation – regardless of whether or not they have fulfilled any previously-existing sex offender registration requirements – jurisdictions should endeavor to register them in conformity with SORNA as quickly as possible, including fully instructing them about the SORNA requirements, obtaining signed acknowledgments of such instructions, and obtaining and entering into the registry all information about them required under SORNA.

In cases in which a sex offender reenters the system based on conviction of some other offense and is sentenced or released from imprisonment following the jurisdiction's implementation of SORNA, the normal SORNA initial registration procedures and timing requirements will apply, but with the new offense substituting for the predicate registration offense as the basis for the time frame.

SORNA does not require jurisdictions to locate and register sex offenders who have entirely left the justice system.

See Part II.C and Part IX of the Final Guidelines for more detail.

37. If a sex offender has a job that requires travel to other jurisdictions, where is he or she required to register?

In situations where a sex offender is employed but does not have a fixed place of employment (e.g., a long-haul trucker whose "workplace" is roads and highways throughout the country, or a self-employed handyman who works out of his home and does home-improvement work in another jurisdiction at other people's homes), such a sex offender is required to provide information concerning the places where the sex offender works with whatever definiteness is possible under the circumstances, such as information about normal travel routes or the general area(s) in which the sex offender works.

Registered sex offenders must also be required to provide information about any place in which the sex offender is staying when away from his residence for seven or more days, including identifying the place and the period of time the sex offender is staying there.

See Part VI of the Final Guidelines for more detail.

38. If a sex offender lives in one jurisdiction, but works or goes to school in another jurisdiction, where is registration required?

SORNA requires that a sex offender register and keep his or her registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student. If, for example, a sex offender resides in one jurisdiction but commutes to work in another jurisdiction, both jurisdictions must require the sex offender to register. A sex offender who enters a jurisdiction to commence residency, employment or school attendance, must appear in person to register or update the registration within three business days.

A sex offender who changes his or her place of residence, employment or school attendance within the same jurisdiction (i.e. from one county to another county in the same jurisdiction), must appear in person to register or update the registration within three business days. The physical location of this in-person appearance requirement is controlled by the jurisdiction of residency, employment or school attendance.

See Part VIII and X.A of the Final Guidelines for more detail.

39. If a sex offender is going to be away from his or her registered residence address for 7 or more days, what must the sex offender do be remain in compliance?

Registered sex offenders are required to notify their residence jurisdiction prior to departing from their jurisdiction for 7 or more days. The sex offender must provide information about all locations in which the sex offender is staying during the 7 or more day absence, including identifying the place and the period of time the sex offender is staying there.

Miscellaneous

40. Will jurisdictions receive any assistance in updating their websites to assure compliance with SORNA?

The Department of Justice, in consultation with the jurisdictions, will develop and support registry management and web-based software. This software will facilitate the immediate exchange of sex offender information among jurisdictions, public access to sex offender information and other forms of community notification through the Internet, and compliance in other respects with the SORNA requirements.

See Part IID of the Final Guidelines for more detail.

41. Will jurisdictions receive any technical assistance in the implementation of SORNA?

The SMART Office has established a technical assistance email, mailto:getSMART@usdoj.gov. The Office is currently receiving a steady stream of

technical assistance requests regarding a variety of issues involved in the implementation of SORNA.

The SMART Office website (www.ojp.usdoj.gov/smart) provides information related to sex offender registration, sexual abuse and exploitation with a focus on legal and legislative developments. The Office posts a bi-weekly case law update addressing developments in sex offender registration litigation, as well as other articles of relevance and interest.

42. Are the provisions of SORNA retroactive?

Yes. SORNA applies to all sex offenders, including those convicted of their registration offenses prior to the enactment of SORNA (July 27, 2006) or prior to particular jurisdictions' incorporation of the SORNA requirements into their programs. Jurisdictions are specifically required to register such sex offenders if they remain in the system as prisoners, supervisees, or registrants, or if they later reenter the system because of conviction for some other crime (whether or not the new crime is a sex offense).

See Part II.C and IX of the Final Guidelines for more detail.

43. How are juveniles treated under SORNA?

Section 42 U.S.C. §16911(8) provides that delinquency adjudications count as convictions "only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense."

Hence, SORNA does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes (or attempts or conspiracies to commit such crimes). Considering the relevant aspects of the federal "aggravated sexual abuse" offense referenced in section 42 U.S.C. §16911(8), it suffices for substantial implementation if a jurisdiction applies SORNA's requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence; or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

"Sexual act" for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

44. How are foreign convictions and tribal convictions treated under SORNA?

Foreign convictions require sex offenders to be registered under SORNA unless the foreign conviction "was not obtained with sufficient safeguards for fundamental fairness and due process for the accused." The Final Guidelines establish rules for determining if legal processes in foreign countries meet the standard required under SORNA. However, jurisdictions may choose to surpass SORNA's minimum standards and register all foreign convictions for sex offenses obtained regardless of safeguards for fundamental fairness and due process.

See Part IVA-B of the Final Guidelines for more detail.

45. Do Jurisdictions have to make statutory changes in order to substantially implement SORNA?

No. While SORNA sets minimum standards for jurisdictions' registration and notification programs, it does not require that these standards be implemented by statute. Hence, in assessing compliance with SORNA, the totality of a jurisdiction's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

46. For purposes of reducing a registration requirement under the "clean record" exception, what does it mean to say a sex offender treatment program is "certified by a jurisdiction"?

Jurisdictions are free to decide what certification criteria they will use and how they will determine which programs are "certified by" the jurisdiction. For instance, a jurisdiction that established a board to certify treatment programs and determine which offenders successfully completed their certified programs would be in compliance with SORNA. Another possible option that would comply with SORNA would be to publish a list of approved programs and require a certificate of successful completion by the treatment provider. Other options also are possible. Determining a set of criteria for certification and how to certify programs is within each jurisdiction's discretion.

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