



November 20, 2013

SORNA Substantial Implementation Review Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the Sisseton-Wahpeton Oyate for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Sisseton-Wahpeton Oyate's SORNA substantial implementation packet and has found that the Sisseton-Wahpeton Oyate has substantially implemented SORNA.

On July 27, 2011, the Sisseton-Wahpeton Oyate submitted a substantial implementation package that included background information on the tribe and its criminal justice system, courts, and police department; policies and procedures regarding sex offender registration; the tribe's sex offender registration law; and other relevant documents. In addition, email and phone correspondence with tribal representatives filled in gaps in laws and procedure. Revised policies and procedures were adopted in the Fall of 2013 and, along with the Sisseton-Wahpeton Oyate Sex Offender Registration and Notification Code (SWO Code), forms the foundation of this report.

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Sisseton-Wahpeton Oyate 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.

While the Sisseton-Wahpeton Oyate is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended to detail every area in which the state has not met SORNA standards.

The Sisseton-Wahpeton Oyate has indicated that it will make the necessary changes to its code as reflected in this report. According to tribal representatives, the policies and procedures will govern the registration and notification system in any case where the code needs to be amended in order to meet SORNA's 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 or her information in a jurisdiction, that the initial registration information or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

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

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Sisseton-Wahpeton Oyate's placement of these statutes within the SORNA three tier levels. Sisseton-Wahpeton Oyate correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

- 18 U.S.C. §2243 (Sexual Abuse of a Minor or Ward)
 - This offense should be classified in the code as a Category 3 Offense, but is properly classified in the revised policies and procedures.
- 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel of a minor in interstate commerce for the purpose of engaging in illicit conduct for financial gain):
 - This offense should be classified in the code as a Category 2 offense when the victim is a minor, but is properly classified in the revised policies and procedures.
- In § 75-03-01, all Tribal Court convictions are classified as Category 1 offenses. When and if a tribal sex offender is subjected to the enhanced punishment of the Tribal Law and Order Act of 2010 by any Tribe and presents themselves for registration by the Sisseton-Wahpeton Oyate, the tiering of such an offense could differ from the baseline Category 1 classification, if the range of available punishment exceeds one year.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

IV. Required Registration Information

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

The SWO Code does not require the registration of international travel information. However, the revised policies and procedures meet all of the SORNA requirements regarding international travel.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

V. Where Registration is Required

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

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

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.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

The Sisseton-Wahpeton Oyate registers offenders who committed a sex offense after January 1, 1984. This conforms with the laws of the State of South Dakota.

The SMART Office has considered this deviation from SORNA's requirement, and has determined that it does not substantially disserve the purposes of this requirement.

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, he or she 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, he or she 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 and intends to travel outside the United States, he or she must notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his or her intent to relocate to another country to live, work or attend school, that the jurisdiction 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.

The SWO Code requires the immediate updating of any change in residence, employment, or school attendance. However, the revised policies and procedures meets or exceeds all of the SORNA requirements in regards to keeping an offender's registration updated.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

IX. Verification/Appearance Requirements

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

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

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

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

X. Public Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

XI. Community Notification

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

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

XII. 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.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

XIII. 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.

The Sisseton-Wahpeton Oyate meets all of the SORNA requirements in this section.

Conclusion

The Sisseton-Wahpeton Oyate has put forth exceptional work and effort in substantially implementing SORNA and enhancing its sex offender registration and notification system.

However, as indicated above, there are a number of code provisions which should be addressed in order for the Sisseton-Wahpeton Oyate to have a permanent code which substantially implements SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.