



March 2015

SORNA Substantial Implementation Review Eastern Band of Cherokee Indians

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 Eastern Band of Cherokee Indians 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 the tribe's SORNA substantial implementation packet and has found that the Eastern Band of Cherokee Indians has substantially implemented SORNA.

On July 17, 2012, the Eastern Band of Cherokee Indians submitted a substantial implementation package including background information on the tribe and its criminal justice system, courts, police department, policies and procedures regarding sex offender registration, the tribe's sex offender registration law and relevant additional laws, as well as forms and notice templates. In addition, email and phone correspondence with the tribe filled in gaps in information and procedures, which informed our review.

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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians 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 tribe has not met SORNA standards.

We encourage you to review the information below, share it with relevant stakeholders in the tribe, 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. Despite the Tribe's efforts to directly submit this data to NCIC/NSOR, the State of North Carolina does not authorize tribal agencies to submit data into NCIC through its system unless the tribe requires sex offenders to register concurrently with the state. This is not consistent with SORNA requirements. At this time there is not an alternative for tribes to submit this necessary data to NCIC/NSOR. These obstacles prevent the Eastern Band of Cherokee Indians from entering information into NCIC/NSOR directly when initially registering a sex offender, when a sex offender indicates a change of residence, when a sex offender updates any information, when a sex offender is going to travel internationally, and/or if an offender absconds. The Eastern Band of Cherokee Indians does update its own website, however, and provides community notifications when an offender's information changes. The Eastern Band of Cherokee Indians has indicated that when it can do so, it will enter all new, updated and recaptured sex offender information into the NCIC/NSOR, as required by SORNA.

The SMART Office is aware of this obstacle and is involved in efforts to find short- and long-term solutions and alternatives for tribes to directly input sex offender information into NCIC/NSOR as necessary. The SMART Office finds that the Eastern Band of Cherokee Indians has currently sufficiently addressed the requirements of this section because no workable solution exists that would permit the tribe to directly submit data to NCIC/NSOR at this time and because the tribe has indicated that it will submit this data to NCIC/NSOR when a future solution is developed.

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.

1. Omission of 18 U.S.C. §2423(d) (transportation of persons [adult/child] ancillary offenses). In March 2011, the SMART Office issued the revised model code which included 18 U.S.C. §2423(d) and tiered the offense as a tier I for adults and a tier II for a minor. The correct language and tiers can be found at: http://www.smart.gov/pdfs/MTSOR_Code.pdf.

While the Eastern Band of Cherokee Indians does not meet the SORNA requirement for this offense, this deviation does not substantially disserve the purposes of the requirements in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction.

1. Omission of 18 U.S.C. §2423(d) (transportation of persons [adult/child] ancillary offenses). In March 2011, the SMART Office issued the revised model code which included 18 U.S.C. §2423(d) and tiered the offense as a tier I for adults and a tier II for a minor. The correct language and tiers can be found at:
http://www.smart.gov/pdfs/MTSOR_Code.pdf.

While the Eastern Band of Cherokee Indians does not meet the SORNA requirement for this offense, this deviation does not substantially disserve the purposes of the 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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians meets all of the SORNA requirements in this section.

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 Eastern Band of Cherokee Indians 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.

A. Duration of Registration

Eastern Band of Cherokee Indians requires that offenders register for the following duration of time after their release from incarceration or sentencing: Tier I offenders register for 15 years, Tier II offenders register for 25 years, and Tier III offenders register for Life.

B. Frequency of Registration

Eastern Band of Cherokee Indians requires offenders to appear in person for purposes of verification and keeping their registration current from the time of release from custody (for a sex offender who is incarcerated for the offense) or from the date of sentencing (for a sex offender who is not incarcerated for the offense), as follows: Tier I (every 12 months); Tier II (every six months); and Tier III (once every three months).

C. Reduction of Registration Period:

Eastern Band of Cherokee Indians permits a Tier I offender to have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years, and an offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier III registration and he or she has maintained a clean record for 25 consecutive years.

D. Clean Record Requirement: A sex offender has a clean record if he or she has satisfied the following requirements: 1) he or she has not been convicted of any offense, for which imprisonment for more than one year may be imposed 2) he or she has not been convicted of any sex offense 3) he or she has successfully completed, without revocation, any period of supervised release, probation, or parole and 4) he or she has successfully completed an appropriate sex offender treatment program certified by the Eastern Band of Cherokee Indians, another jurisdiction, or by the Attorney General of the United States.

The Eastern Band of Cherokee Indians 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. SORNA also requires that a jurisdiction's web site be listed on the Dru Sjodin National Sex Offender Public Web site (NSOPW).

At this time, the Eastern Band of Cherokee Indians has a public website: <http://nc-choerokee.nsopw.gov>, which is listed on NSOPW and has 32 offenders listed.

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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians 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 Eastern Band of Cherokee Indians meets all of the SORNA requirements in this section.

XIV. Other Considerations

Within the policies and procedures, the Eastern Band of Cherokee Indians mistakenly refers to notifying INTERPOL in instances of sex offenders requesting to go outside of the United States. However, the Code correctly cites the United States Marshals as the entity to inform. All

references should be changed to notify the United States Marshals. There are no other considerations beyond this inconsistency.

Conclusion

The Eastern Band of Cherokee Indians has put forth exceptional work and effort in substantially implementing SORNA and enhancing its sex offender registration and notification system.