



# The Adam Walsh Act: A National Endeavor to Protect Children and Families

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# The Final National Guidelines



# Summary of Comments:

- Approximately 275 comments received.
- Focused on:
  - Tribal
  - Treatment of juveniles
  - Retroactivity
  - Public Website Information
  - Registration jurisdictions
  - Examination of underlying conduct
  - Duration of registration
  - Risk assessments
  - Aids to implementation



# I. Introduction:

- No modifications from proposed guidelines.



## II. General Principles: A. Terminology

- **“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.



- **“Jurisdiction”**: The 50 States, the District of Columbia, the five principal U.S. territories (Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands) and Indian tribes that elected to function as registration jurisdictions under SORNA §127.
- **“Covered jurisdictions”**: States, territories, D.C., Non-P.L. 280 Indian tribes.



- **“Imprisonment”**: Refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence



## B. Minimum National Standards:

- “A floor not a ceiling.”
- Consistent with the Wetterling standards.
- NSOR not limited by SORNA §111(1),(5)-(8).
- NSOPR not limited by SORNA’s definition of sex offender.
- SORNA §141(f)-(g) Notice of sex offender release.
- AWA §631 encourages additional measures to promote effective tracking and monitoring.



# Exceptions to “Floor” Principle

- **SORNA standardizes information required.**
- **In general: Information about each sex offender in the registry is to be made available to the public on the Internet, subject to certain statutory exceptions & the authority of the Attorney General to allow additional exemptions.**



## **C. Retroactivity: Registration Requirements For Pre/Post- SORNA Convicted Sex Offenders**

- **Qualifying sex offenders must register under SORNA if:**
  - **Convicted post-SORNA; or**
  - **Convicted pre-SORNA or pre-SORNA implementation and:**
    - **Currently incarcerated,**
    - **Currently under supervision, or**
    - **Reenters the judicial system.**



- Jurisdictions may rely on normal methods and standards for obtaining and reviewing criminal history information, and on the information available in the records obtained by such means in ascertaining SORNA registration requirements for sex offenders in the retroactive class.



# SORNA §113(d): Ex Post Facto

- Non-punitive.
- Regulatory measure.
- May be validly applied and enforced by criminal sanctions against sex offenders whose predicate offenses occurred prior to the creation of these requirements.
  - See *Smith v. Doe* 538 US 84 (2003).



# D. Automation—Electronic Databases and Software



# Registry Software Resource Development and Support

- **Adding remaining territories and 197 tribes:**
  - Northern Mariana Islands, Virgin Islands, American Samoa.
- **NSOPR enhancements:**
  - Zip code, radius and geographical searches.
- **Communication packet.**
- **Sex offender tracking between states.**
- **Community notification per SORNA §121(b).**
- **Subscription services:**
  - Mapping, email notification, thumbnail photos.



# E. Implementation

- “Substantial Implementation”
- Constitutional conflicts (SORNA §125(b)(3)).



## III. Covered Jurisdictions: Tribal Considerations

- Final guidelines:
  - Where a tribe delegates registration authority to a State, the tribal authorities still retain their sovereign powers and, as such, may engage in whatever sex offender registration and notification functions they wish, so long as there is no conflict with the State's responsibilities under SORNA.
  - Eliminates portion of the proposed guidelines which allows jurisdictions to choose to not require registration for certain tribal court convictions.



# Tribal Considerations

- Final Guidelines:
  - Tribes are expressly permitted to enter into cooperative agreements for the purposes of discharging their registration and/or notification duties.
  - Clarifies term traditional names.
  - Limited to ethnic or tribal names.



## IV. Covered Sex Offenses and Sex Offenders

- A. Convictions Generally:
  - Tribal:
    - The proposed guidelines classified all tribal convictions as Tier I offenses.
    - The final guidelines states jurisdictions are free to require enhanced registration requirements based on tribal convictions.



# SORNA and Juveniles

- **Juveniles prosecuted as adults.**
- **Juveniles included under SORNA:**
  - Age 14 or older,
  - Adjudicated delinquent,
  - Most serious sexually assaultive crimes.



## Juvenile Registration (SORNA § 111(8)):

- **42 USC § 16911(8) requires registration for any juvenile age fourteen or older who is adjudicated delinquent for an offense “comparable to or more serious than” the federal aggravated Sexual Abuse Statute, 18 USC § 2241.**
- **The final guidelines clarify the requirements for compliance with SORNA. To fulfill SORNA’s requirements, jurisdictions will need to register 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, as clarified by the final guidelines simply includes “any degree of genital or anal penetration, and any oral-genital or oral-anal contact.”**



# “Aggravated Sexual Abuse”

- Engaging in a sexual act with another by force or the threat of serious violence (see 18 U.S.C. 2241(a));
- Engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (see 18 U.S.C. 2241(b));
- Engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c)).



# **SORNA 111(5)(c): Consensual sexual conduct**

- If victim is an adult, then not under the custodial authority of the offender,
- If victim is at least 13 years old, offender is not more than 4 years older.



## **B. Foreign Convictions**

- **No changes from proposed guidelines.**



# C.-E. Sex Offenses, Specified Offenses Against Minors, Protected Witnesses

- No substantial changes.



# V. Classes of Sex Offenders

- Final guidelines clarify discretion by jurisdictions to adjust upward.
- Enhancements based on recidivism clarified.
- Tier classification criteria do not constitute independent requirements to register offenders for who SORNA does not otherwise require registration.



# Determining the Tier of an Offense

- Jurisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction.
- Exception: When the age of the victim might affect the tier of an offense. In that case, the 'in fact' age of the victim is what matters, regardless of the elements of the offense of conviction.



# Tier III

- **Lifetime registration.**
- **Quarterly show-ups.**
- **Predicate offenses generally include:**
  - **Forcible sex crimes and penetration offenses,**
  - **Rape or rape-like offenses,**
  - **Sexual assaults involving sexual acts regardless of victim age,**
  - **Sexual contact offenses against children below the age of 13,**
  - **Nonparental kidnapping of minors,**
  - **Attempts or conspiracies to commit such offenses.**



# Tier II

- **25 year registration.**
- **Bi-annual show-ups.**
- **Predicate offenses include:**
  - **Crimes punishable >1 year and exclusively crimes against minors,**
  - **Most felonious sexual abuse,**
  - **Sexual exploitation crimes involving victims who are minors,**
  - **“Solicitation” of a minor.**



# Tier I

- **15 year registration.**
- **Annual show-ups.**
- **Predicate offenses:**
  - **Crimes not support a higher classification,**
  - **Misdemeanor registration offenses,**
  - **Child pornography possession.**



# VI. Required Registration Information

## SORNA §114:

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



## VII. Disclosure and Sharing of Information: Public Website Required Information

- **Name**
- **Photograph**
- **Physical description**
- **Current Offense & Prior Sex Offenses**
- **Employer Address**
- **Resident Address**
- **School Address**
- **Vehicle(s) license plate number and description.**



- **Mandatory exemptions:**
  - **Victim's identity** (SORNA §118(b)).
  - **Sex offender's SSN** (SORNA §118(b)).
  - **Any arrests not resulting in a conviction.**
  - **Travel and immigration numbers per §118 (b)(4).**
- **Discretionary exemptions:**
  - **Information regarding tier 1 sex offenders with convictions other than a specified offense against a minor.**
  - **Employer's name.**
  - **School name.**
  - **Telephone numbers.**
  - **Remote communication addresses.**



# Disclosing Email Addresses

- Jurisdictions are 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.



# Remote Communication Address Search Demonstration Site

View the code for this page  
[Click Here](#)

## Remote Communication Address Search For StateX

Welcome to StateX's Remote Communication Address Search for sex offenders. Please enter an e-mail address or telephone number in the field below to search.

E-mail Address or Telephone Number  (jsmith@yahoo.com or 8505551234 produce results)

Agreement terms:  
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## VIII. Where Registration is Required

- Section edited for clarity.
- SORNA refers to “jurisdictions” as defined earlier.
- “Conviction jurisdiction” registration clarified.
- “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.



# IX. Initial Registration

- **Initial registration process:**
  - **Inform sex offender of registration obligation.**
  - **Require sex offender to read and sign form acknowledging obligation.**
  - **Ensure sex offender is registered shortly before release or within 3 days of sentencing.**



## X. Keeping the Registration Current

- Regarding transient residency or employment: Final guidelines allow flexibility to jurisdictions to obtain information with whatever definiteness is possible under the circumstances.
- Termination of residency, employment, student status must be reported in the appropriate jurisdiction.
- Only change of name, residence, employment or school status requires in-person appearance.



# XI. Verification/Appearance requirements

- No significant changes.
- Suggests maintaining a deceased sex offenders webpage.



## XII. Duration of Registration:

- Registration procedures are not necessary when sex offender is in custody or under civil commitment.
- Tolling registration time period is discretionary by the jurisdiction.



# **SORNA §115(b): Clean record provision**

- **No modifications in final guidelines.**
- **Juveniles and Tier I.**
- **Requirements:**
  - **No sex offense convictions,**
  - **No felony convictions,**
  - **Completed an appropriate sex offender treatment program,**
  - **Successfully completed supervision.**



# **XIII. Enforcement of Registration Requirements**

- **No modification in final guidelines.**
- **Requires jurisdictions to enact or conform current statutes.**
- **Maximum penalty must exceed 1 year.**
  - **Caveat: Indian tribes.**



# Implementation Timeline

- **April 27, 2009**: Suggested deadline to submit SORNA substantial compliance information to SMART Office.
- **April 27, 2009**: Suggested deadline to submit a request for an initial one-year extension to implement SORNA (section 124(b)).
- **July 27, 2009**: SORNA substantial compliance deadline.



# Phasing in Sex Offender Registrations

- **Tier III:** within 3 months of implementation.
- **Tier II:** within 6 months of implementation.
- **Tier I:** within 1 year of implementation.



# Residency Restrictions

- 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.



**For more information please contact:**

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