

SEX OFFENDERS IN MARYLAND AND THE IMPACT OF THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT



DEPARTMENT OF LEGISLATIVE SERVICES 2010

Sex Offenders in Maryland and the Impact of the Federal Sex Offender Registration and Notification Act

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

January 2010

Contributing Staff

Writers

Guy Cherry
Yvette Smallwood

Reviewers

Shirleen Pilgrim

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 • Washington Area: 301-970-5400

Other Areas: 1-800-492-7122, Extension 5400

TTY: 410-946-5401 • 301-970-5401

Maryland Relay Service: 1-800-735-2258

E-mail: libr@mlis.state.md.us

Home Page: <http://mlis.state.md.us>

The Department of Legislative Services does not discriminate on the basis of age, ancestry, color, creed, marital status, national origin, race, religion, gender, sexual orientation, or disability in the admission or access to its programs, services, or activities. The Department's Information Officer has been designated to coordinate compliance with the nondiscrimination requirements contained in Section 35.107 of the Department of Justice Regulations. Requests for assistance should be directed to the Information Officer at the telephone numbers shown above.

January 18, 2010

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House
Members of the Maryland General Assembly

Ladies and Gentlemen:

This report, *Sex Offenders in Maryland and the Impact of the Federal Sex Offender Registration and Notification Act*, was prepared by the Department of Legislative Services, Office of Policy Analysis, in response to the continuing legislative interest in the issue. The report provides an overview of the State's sex offender registry and penalties for sex crimes in the State and discusses the requirements of the Federal Sex Offender Registration and Notification Act.

This report was written by Guy Cherry with assistance from Yvette Smallwood and under the editorial direction of Shirleen Pilgrim.

I trust this information will be a useful resource for members of the General Assembly and their staff.

Sincerely,

Warren G. Deschenaux
Director

WGD/SMP/lkj

Contents

Transmittal Letter.....	iii
Sex Offenders in Maryland.....	1
Federal Sex Offender Registration and Notification Act (SORNA)	2
Epilogue	5
Appendix 1: Sex Offender Registration Requirements Under Maryland Statute and SORNA	7
Appendix 2: SORNA Substantial Implementation Checklist.....	20

Sex Offenders in Maryland and the Impact of the Federal Sex Offender Registration and Notification Act

Sex Offenders in Maryland

Generally, a person convicted of a sex crime, kidnapping, or false imprisonment in Maryland is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult are required to register at the time the juvenile court's jurisdiction terminates for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old. Juveniles who are adjudicated delinquent through the juvenile court system for an act that does not constitute first or second degree rape or first or second degree sexual assault if committed by an adult are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) an offender; (2) a child sexual offender; (3) a sexually violent offender; and (4) a sexually violent predator.

"Offender" means a person who is ordered by a court to register and who (1) has been convicted of child kidnapping; (2) kidnapping; (3) fourth degree sexual offense, if the victim is under 18; (4) false imprisonment, if the victim is under 18 and the person is not the victim's parent; (5) a crime that involves soliciting a person under 18 to engage in sexual conduct; (6) production or distribution of child pornography; (7) prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; (8) any crime that involves conduct that by its nature is a sexual offense against a person under 18; (9) an attempt to commit any of these offenses; or (10) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who (1) has been convicted of sexual abuse of a minor; (2) has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of these crimes.

“Sexually violent offender” means a person who (1) has been convicted of a sexually violent offense; or (2) has been convicted of an attempt to commit a sexually violent offense.

“Sexually violent predator” means a person who (1) is convicted of a sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

Sexual offenders are required to register, every three months or every six months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated every six months. The registry is operated by the Sexual Offender Registry unit of the Department of Public Safety and Correctional Services. Under the State’s sexual offender registration laws, a State’s Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

Federal Sex Offender Registration and Notification Act

Over the past decade, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register.

The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed guidelines were published on May 30, 2007. The period for public comment on the proposed guidelines ended on August 1, 2007, and the final guidelines were issued on July 2, 2008. Under SORNA, July 27, 2010, is the deadline for

substantial implementation of SORNA's requirements for all registration jurisdictions, although a request for a one-year extension may be submitted.

The federal law divides the classes of sex offenders into a three-tiered system. Under that system, registration is for 15 years, 25 years, or life, depending on whether the offense is classified as Tier I, Tier II, or Tier III, respectively. In addition, sex offenders will be required to provide the following information to the sex offender registry:

- names, including all aliases used by the sex offender;
- date of birth, including both actual date of birth and any false date(s) of birth used by the sex offender;
- all Internet identifiers and addresses, e.g., e-mail and instant messaging addresses;
- all telephone numbers including both land lines and cell phone numbers;
- social Security Numbers (SSN), including both valid governmentally assigned SSNs and any other SSNs used by the sex offender;
- residence address;
- other residence information (i.e. where the sex offender has a home or habitually lives) in relation to sex offenders who lack a residence address for any reason (e.g., homelessness, or living in a house in a rural or tribal area that has no street address);
- temporary lodging information about any place in which the sex offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there;
- passport and immigration document information;
- employer's name and address;
- other employment information concerning the places where the sex offender works, if the sex offender has no fixed place of employment, such as information about normal travel routes or the general area(s) in which the sex offender works;
- professional licenses;

- school name and address;
- vehicle information including description and license plate or registration number;
- physical description of the sex offender;
- text of the registration offense or offenses;
- criminal history and other criminal justice information;
- current photograph;
- fingerprints and palm prints;
- DNA information; and
- driver's license or identification card.

Under SORNA's provisions related to juvenile offenses, the juvenile must be 14 or older, adjudicated delinquent, and have committed an act comparable to 18 U.S.C. 2241 (Aggravated Sexual Abuse) or a forcible sex act or a sex act with a person who is unconscious or drugged. Violations against certain children under age 12 under 18 USC 2241(c) are being left to the discretion of the state. In addition, sealed records are still convictions and are subject to registration requirements.

Additional requirements under SORNA include the following¹: (1) jurisdictions do not have to look behind the conviction to determine tier level as the face of the conviction is enough except to determine victim's age; (2) states do not have to mirror federal tiers – these are minimum standards that must be met to be in substantial compliance; however it may be necessary to significantly revamp Maryland's classification system to meet the minimum federal requirement²; (3) Tier I sex offenders do not have to be included on a registry unless the crime was against a minor; (4) the definition of "habitually lives" is up to interpretation by jurisdictions; and (5) in person changes to registry is only required for changes of name, residence, employment, or school attendance – other changes may be made in any manner the jurisdiction sees fit.

¹ See Appendix 2 for the SORNA substantial implementation checklist.

² See Appendix 1 for a tabulation of Maryland sexual offenses and how they would be tiered under SORNA (not including the KIDS Act).

Although the SORNA provisions were made retroactive, jurisdictions do not have to seek out pre-SORNA convicted sex offenders and re-register them. This does not impact substantial compliance. If a person re-offends or re-enters the judicial system for any crime, the individual will need to register under SORNA guidelines.³ The Act applies to all sexual offenders, including those offenders convicted prior to the enactment of SORNA (July 27, 2006) or prior to a particular jurisdictions' implementation of the SORNA requirements.

According to the National Conference of State Legislatures, in 2007, at least six states – Delaware, Florida, Louisiana, Mississippi, Nevada and Ohio – revised sex offender laws in an effort to comply with the Walsh Act. To date, Ohio is the only state to substantially implement SORNA.

Failure to comply with SORNA puts a state at risk to lose 10% of Byrne grants, which states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. Under the federal American Recovery and Reinvestment Act of 2009 (the federal “Stimulus Bill”), the Byrne formula grants program has been reauthorized from fiscal 2009 through 2011. Maryland will receive an estimated \$26.6 million in fiscal 2010 and \$18.5 million in fiscal 2011. No Byrne funds are at risk in fiscal 2010; however, Maryland could be at risk to lose about \$1.9 million in Byrne funding in fiscal 2011.

Epilogue

On September 27, 2008, the U.S. Congress passed S 431 (Keeping the Internet Devoid of Sexual Predators Act of 2008 or the KIDS Act of 2008), which amends SORNA to require a convicted sex offender to provide for inclusion in the National Sex Offender Registry any electronic mail address or other designation the sex offender uses or will use for self-identification or routing in Internet communication or posting (online identifiers). The legislation grants the U.S. Attorney General authority to specify the time and manner for reporting of other changes in registration information, including additions or changes of online identifiers. Guidelines and regulations for this Act have not yet been developed.

The KIDS Act:

- amends the federal criminal code making it unlawful for any person who is required to register as a convicted sex offender to knowingly fail to provide online identifiers for inclusion in a sex offender registry. A violator is subject to a fine and/or prison term of up to 10 years;

³ The case, Carr v. United States No. 08-1301, was granted review by the United States Supreme Court on September 30, 2009. The case challenges the rule which requires states to retroactively apply SORNA to criminal defendants who re-enter the criminal justice system for any offense, even when the prior offense predated the enactment of SORNA.

- amends the Adam Walsh Child Protection and Safety Act of 2006 to expand the directive of the U.S. Sentencing Commission to promulgate sentencing guidelines for failure of a convicted sex offender to register in the national registry to include failure to provide online identifiers;
- requires jurisdictions that maintain information about sex offenders to exempt from public disclosure any electronic mail address or designation used for self-identification or routing in Internet communication or posting;
- requires the Attorney General to maintain a system available to social networking web sites that permits the automated comparison of online identifiers in such web sites to information contained in or derived from sex offender registries for the purpose of protecting the safety of users of such web sites. Allows the Attorney General to control the number of searches allowed to a social networking web site and to deny, suspend, or terminate the use of such system by a web site;
- prohibits the Attorney General and social networking web sites from releasing online identifiers to the public;
- exempts a commercial social networking web site from civil claims in federal or state court arising from (1) use of the national registry unless such web site engages in actual malice, intentional misconduct, or reckless disregard to a substantial risk of causing injury without legal justification; and (2) any decision not to compare its database with the online identifiers contained in the national registry;
- imposes a fine and prison term of up to 20 years for intentional misrepresentation of age using the Internet or the mail for the purpose of coercing or enticing individuals, including minors, to engage in prostitution or other illicit sexual behavior;
- defines "possess" with respect to crimes of child sexual exploitation and child pornography to include accessing by computer visual depictions of child pornography with the intent to view; and
- expands the jurisdictional bases for prosecutions of child sexual exploitation and child pornography crimes to include activities occurring in, affecting, or using any means or facility of, interstate or foreign commerce.

Sex Offender Registry Requirements under Maryland Statute and SORNA

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 3-303	Rape in the first degree. <i>Felony</i>	Vaginal intercourse by force or threat, with use or display of weapon, with infliction or threat of serious physical injury or disfigurement while aided and abetted, or in connection with a burglary.	Up to life imprisonment – without possibility of parole if victim is child under 16 and is kidnapped or if prior conviction of rape in 1st degree or sexual offense in 1st degree and victim is child under 16 and is kidnapped. (Ch. 345 of 2008) Imprisonment from 25 years to life without possibility of parole if offender is 18 or older and victim is child under 13.	Child sexual offender if victim is child under 15 Sexually violent offender (or sexually violent predator, if so determined) if victim is 15 or older Registration for life	III

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 3-304	Rape in the second degree <i>Felony</i>	Vaginal intercourse by force or threat, if victim is mentally or physically incapacitated, or if victim is under 14 and offender is at least 4 years older than victim.	Up to 20 years imprisonment. Imprisonment from 5 to 20 years if offender is 18 or older and victim is child under 13.	Child sexual offender if victim is child under 15 Sexually violent offender (or sexually violent predator, if so determined) if victim is 15 or older Registration for life	III (except statutory rape where victim ≥ 12 = tier I)
§ 3-305	Sexual offense in the first degree <i>Felony</i>	Sexual act by force or threat, with use or display of weapon, with infliction or threat of serious physical injury or disfigurement, while aided and abetted, or in connection with a burglary.	Up to life imprisonment – without possibility of parole if also convicted in same proceeding of child kidnapping and victim is child under 16 or if prior conviction of sexual offense in 1st degree or rape in 1st degree. Imprisonment from 25 years to life without possibility of parole if offender is 18 or older and victim is child under 13.	Child sexual offender if victim is child under 15 Sexually violent offender (or sexually violent predator, if so determined) if victim is 15 or older Registration for life	III

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 3-306	Sexual offense in the second degree <i>Felony</i>	Sexual act by force or threat, if victim is mentally or physically incapacitated, or if victim is under 14 and offender is at least 4 years older than victim.	Up to 20 years imprisonment. Imprisonment from 5 to 20 years if offender is 18 or older and victim is child under 13.	Child sexual offender if victim is child under 15 Sexually violent offender (or sexually violent predator, if so determined) if victim is 15 or older Registration for life	III (except statutory rape where victim ≥ 12 = tier I)
§ 3-307	Sexual offense in the third degree <i>Felony</i>	Sexual contact with use or display of weapon, with infliction or threat of serious physical injury or disfigurement, while aided and abetted, if victim is mentally or physically incapacitated, if victim is under 14 and offender is at least 4 years older than victim. Sexual act if victim is 14 or 15 and offender is at least 21. Vaginal intercourse if victim is 14 or 15 and offender is at least 21.	Up to 10 years imprisonment	Child sexual offender if victim is child under 15 Sexually violent offender (or sexually violent predator, if so determined) if victim is 15 or older Registration for life	III if victim < 13 (except statutory rape where victim ≥ 12 = tier I) II if victim ≥ 13 , except statutory rape where victim ≥ 12 = tier I

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 3-308	Sexual offense in the fourth degree <i>Misdemeanor</i>	Sexual contact without consent; sexual act if victim is 14 or 15 and offender is at least 4 years older than victim; vaginal intercourse if victim is 14 or 15 and offender is at least 4 years older than victim; sexual act, sexual contact, or vaginal intercourse by person in a position of authority with currently enrolled student.	Up to 1 year imprisonment and/or maximum fine of \$1,000; Up to 3 years imprisonment and/or \$1,000 if prior conviction of sexual offense	Child sexual offender if victim is child under 15 and court orders registration Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	III if victim < 13 II if victim ≥ 13 statutory rape = I
§ 3-309	Attempted rape in the first degree <i>Felony</i>		Up to life imprisonment	Sexually violent offender (or sexually violent predator, if so determined) Registration for life	III
§ 3-310	Attempted rape in the second degree <i>Felony</i>		Up to 20 years imprisonment	Sexually violent offender (or sexually violent predator, if so determined) Registration for life	III (except statutory rape where victim ≥ 12= tier I)
§ 3-311	Attempted sexual offense in the first degree		Up to life imprisonment	Sexually violent offender (or sexually violent predator, if	III

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
	<i>Felony</i>			so determined) Registration for life	
§ 3-312	Attempted sexual offense in the second degree <i>Felony</i>		Up to 20 years imprisonment	Sexually violent offender (or sexually violent predator, if so determined) Registration for life	III (except statutory rape where victim ≥ 12 = tier I)
§ 3-314	Sexual conduct between correctional or Department of Juvenile Justice employee and inmate or confined child <i>Misdemeanor</i>	Correctional employee or correctional facility worker may not engage in sexual contact, vaginal intercourse, or sexual act with inmate; person may not engage in sexual contact, vaginal intercourse, or sexual act with individual confined in child care institution or juvenile facility.	Up to 3 years imprisonment and/or maximum fine of \$3,000	Not specified*	I
§ 3-315	Continuing course of conduct with child <i>Felony</i>	To commit 3 or more acts of rape in 1 st or 2 nd degree or sexual offenses in 1 st , 2 nd , or 3 rd degree over period of 90 days or more with victim under 14.	Up to 30 years imprisonment	Not specified*	III

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 3-321	Sodomy <i>Felony</i>		Up to 10 years imprisonment	Not specified*	Not specified
§ 3-322	Unnatural or perverted sexual practice <i>Misdemeanor</i>	To take the sexual organ of another or of an animal in the person's mouth; to place the person's sexual organ in the mouth of another or of an animal; or to commit another unnatural or perverted sexual practice with another or with an animal.	Up to 10 years imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified
§ 3-323	Incest <i>Felony</i>	To knowingly engage in vaginal intercourse with anyone that offender would be prohibited from marrying under State law.	Imprisonment from 1 to 10 years	Not specified*	I (not specified)
§ 3-324	Sexual solicitation of a minor <i>Felony</i>	To knowingly solicit a minor, with intent to commit rape in 2nd degree, sexual offense in 2nd or 3rd degree, receiving earnings of prostitute, abduction of	Up to 10 years imprisonment and/or maximum fine of \$25,000	Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	II

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
		child under 16 for prostitution or sexual crimes, or engaging in, operating, or allowing a structure under the person's control to be used for prostitution.			
§ 3-502	Kidnapping <i>Felony</i>	By force or fraud, to carry or cause a person to be carried in or outside the State with intent to have person carried or concealed in or outside the State.	Up to 30 years imprisonment	Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	III (if minor victim, otherwise I)
§ 3-503	Child kidnapping <i>Felony</i>	(1) To forcibly abduct a child under 12, without consent of parent or guardian to entice child under 12 away from home or parent or guardian, or with intent to deprive parent or guardian of custody, care, and control of child, to knowingly secrete or harbor child under 12 (2) By force or fraud, to kidnap, steal, take,	(1) Up to 20 years imprisonment (2) Up to 30 years imprisonment Up to life imprisonment without possibility of parole if person also convicted of rape or a first degree sexual offense in same proceeding	Offender, if ordered by a court to register Registration for 10 years	III

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
		or carry away a child under 16.			
§ 3-602	Sexual abuse of a minor <i>Felony</i>	Parent, household member, family member, or other person who has care, custody, or supervision of a minor may not commit sexual molestation or exploitation of the minor, including incest, rape, sexual offense in any degree, sodomy, or unnatural or perverted sexual practices	Up to 25 years imprisonment	Child sexual offender Registration for 10 years (life if victim is under 12 and crime is sexual act involving penetration)	Depends on the nature of the act and the age of the child (special relationship no relevant under federal law)
§ 11-102	Adult sexual display – selling or offering to sell to minor <i>Misdemeanor</i>	To sell or offer to sell to a minor pictures, images, or other visual representations that show the human body involved in sadomasochistic abuse, sexual conduct, or sexual excitement, books, other printed matter, or sound recordings that contain obscene or explicit material.	Up to 6 months imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 11-103	Adult sexual display – exhibition to minors <i>Misdemeanor</i>	For money or other value, to knowingly exhibit or sell to a minor a motion picture or other presentation that displays sadomasochistic abuse, sexual conduct, or sexual excitement.	Up to 6 months imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified
§ 11-104	Adult sexual display – allowing minors to enter or remain on premises <i>Misdemeanor</i>	To operate or be employed by a retail establishment and to knowingly allow a minor without a parent or guardian to enter or remain on premises where sadomasochistic abuse, sexual conduct, sexual excitement, or obscene or explicit material is shown, displayed, or depicted.	Up to 6 months imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified
§ 11-107	Indecent exposure <i>Misdemeanor</i>	As defined in common law.	Up to 3 years imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified
§ 11-203	Sale or display of obscene item to minor	To willfully or knowingly display, exhibit, sell, or distribute to minor	1st violation: Up to 1 year imprisonment and/or a maximum fine of \$1,000	Not specified*	Not specified

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
	<i>Misdemeanor</i>	obscene material or material depicting illicit sex.	Each subsequent violation: Up to 3 years imprisonment and/or a maximum fine of \$5,000		
§ 11-207	Child pornography <i>Felony</i>	To cause, induce, solicit, or knowingly allow a minor to be the subject in the production of obscene matter that shows sadomasochistic abuse or sexual conduct through the use of photographs, film, or computers or to knowingly promote, distribute, or compile such material.	1st violation: Up to 10 years imprisonment and/or a maximum fine of \$25,000 Each subsequent violation: Up to 20 years imprisonment and/or a maximum fine of \$50,000	Offender, if ordered by a court to register Registration for 10 years	II
§ 11-208	Possession of visual representation of child under 16 engaged in certain sexual acts <i>Misdemeanor</i>	To knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under 16 as subject of sadomasochistic abuse, sexual conduct, or in state of excitement.	1st violation: Up to 2 years imprisonment and/or a maximum fine of \$2,500 Each subsequent violation: Up to 5 years imprisonment and/or a maximum fine of \$10,000	Not specified*	Not specified*

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
§ 11-209	Hiring minor for prohibited purpose <i>Misdemeanor</i>	To hire, employ, or use an individual that the person knows or reasonably should know is a minor to engage in illicit sex or assist with illicit sex acts.	1st violation: Up to 1 year imprisonment and/or a maximum fine of \$1,000 Each subsequent violation: Up to 3 years imprisonment and/or a maximum fine of \$5,000	Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	II
§ 11-303	Human Trafficking <i>Misdemeanor/Felony</i>	To take, place, threaten, unlawfully detain, or receive consideration for placement of another in a place for prostitution.	Up to 10 years imprisonment and/or a maximum fine of \$5,000 (misdemeanor) Minor victim: Up to 25 years imprisonment and/or a maximum fine of \$15,000 (felony)	Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	II
§ 11-305	Abduction of child under 16 <i>Misdemeanor</i>	To persuade, entice, or aid in such or knowingly secrete, harbor, or aid in such of an individual under 16 for prostitution or sexual crimes.	Up to 10 years imprisonment and/or a maximum fine of \$5,000	Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	II
§ 11-306	House of prostitution <i>Misdemeanor</i>	To engage in or solicit for prostitution or keep, occupy, operate, or allow a building under	Up to 1 year imprisonment and/or a maximum fine of \$500	Offender, if ordered by a court to register and victim/prostitute is under 18	Not specified

Statute	Offense	Definition	Penalty Upon Conviction of Adult	Sex Offender Registry Requirement	Federal Tier
		the person's control to be used for prostitution.		Registration for 10 years	
Common Law	Common law false imprisonment <i>Misdemeanor</i>	Victim under 18 and person is not victim's parent.		Offender, if ordered by a court to register and victim is under 18 Registration for 10 years	I

* Under § 11-701 of the Criminal Procedure Article, the definition of offender includes a person who is ordered by a court to register and who "has been convicted of a crime that involves conduct that by its nature is a sexual offense against a person under the age of 18 years." An offender is required to register for 10 years.

NOTE: All repeat offenders must register for life.

DEFINITIONS:

Criminal Law Article § 3-301(e) and (f)

(e) (1) "Sexual act" means any of the following acts, regardless of whether semen is emitted:

- (i) analingus;
- (ii) cunnilingus;
- (iii) fellatio;
- (iv) anal intercourse, including penetration, however slight, of the anus; or
- (v) an act:

1. in which an object penetrates, however slightly, into another individual's genital opening or anus; and
2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(2) “Sexual act” does not include:
(i) vaginal intercourse; or
(ii) an act in which an object penetrates an individual’s genital opening or anus for an accepted medical purpose.

(f) (1) “Sexual contact”, as used in §§ 3–307, 3–308, and 3–314 of this subtitle, means an intentional touching of the victim’s or actor’s genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.
(2) “Sexual contact” includes an act:
(i) in which a part of an individual’s body, except the penis, mouth, or tongue, penetrates, however slightly, into another individual’s genital opening or anus; and
(ii) that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.
(3) “Sexual contact” does not include:
(i) a common expression of familial or friendly affection; or
(ii) an act for an accepted medical purpose.

Source: Maryland Annotated Code; SORNA



SEX OFFENDER REGISTRATION AND NOTIFICATION ACT SUBSTANTIAL IMPLEMENTATION CHECKLIST

This checklist is designed as a tool to assist registration jurisdictions as they seek to substantially implement SORNA. It is not a definitive guide to SORNA's full implementation requirements. Jurisdictions are advised to consult with the SMART Office throughout their implementation process to ensure that their laws, policies, procedures, and practices conform with the entirety of what SORNA requires.

I. IMMEDIATE TRANSFER OF INFORMATION

Whenever a sex offender initially registers or updates their registration information with a jurisdiction, that jurisdiction is required to immediately notify any other 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. This includes notification to any relevant SORNA-registration jurisdiction, including states, territories, tribes, and the District of Columbia.

The jurisdiction is also required to immediately update the National Sex Offender Registry (NSOR) and their own public sex offender registry website.

- **Immediate:** 'Immediate' and 'immediately' are defined as 'within 3 business days'

_____ Any initial registration and/or updated information is:

_____ immediately sent to

_____ any required SORNA-registration jurisdiction, including:

_____ States

_____ D.C.

_____ The five principal U.S. Territories; and

_____ Any tribe operating as a SORNA registration jurisdiction

_____ NSOR

_____ The jurisdiction's public sex offender registry website

II. TERMINOLOGY

The next issue to be addressed in determining substantial implementation is that of terminology. SORNA defines certain terms in very specific ways and a jurisdiction's registration scheme must meet, and may exceed, these minimum standards.

_____ **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 elect to function as registration jurisdictions under 42 U.S.C. §16927.

Whenever SORNA or the Guidelines refer to a "jurisdiction", this is the definition that should be used.

_____ **Sex Offense** The term "sex offense" is not used to refer to any and all crimes of a sexual nature, but rather to those covered by the definition of "sex offense" appearing in 42 U.S.C. §16911(5).

III. OFFENSES THAT MUST BE INCLUDED IN THE REGISTRY

A jurisdiction must include certain sex offenders in their registration schemes. As defined by SORNA, **sex offenders** are individuals **convicted** of certain **sex offenses**.

_____ **Convicted**

_____ An adult sex offender is **convicted** for SORNA purposes if her or she has been subject to penal consequences based on the conviction, however it may be styled.

_____ The following two classes of convictions are also included in the SORNA definition of **convicted**, and must be included in the jurisdiction's registry:

_____ convictions of juveniles who are prosecuted as adults

_____ persons adjudicated delinquent as a juvenile for a sex offense, but 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 18 U.S.C. § 2241), or was an attempt or conspiracy to commit such an offense. (See SORNA's Juvenile Fact Sheet for additional important information:

http://www.ojp.usdoj.gov/smart/pdfs/factsheet_sorna_juvenile.pdf)

SORNA specifies the sex offenses which, if they already exist in a jurisdiction, must be included in any jurisdiction's registration scheme, as well as those convictions from other

jurisdictions (including the federal government and foreign countries) which must be included. Jurisdictions are not required to enact any new substantive sex offense crimes in order to substantially implement SORNA.

Jurisdictions must register any sex offender **convicted** of any of the following offenses:

_____ **Attempts and Conspiracies** Any attempt or conspiracy to commit any sex offense

_____ **Federal Offenses** Convictions under the following federal statutes (including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C. §1152 or §1153)):

- _____ 18 U.S.C. §1591 (Sex Trafficking of Children)
- _____ 18 U.S.C. §1801 (Video Voyeurism of a Minor)
- _____ 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)

_____ **Foreign Offenses** Jurisdictions must also register certain sex offenders convicted of foreign sex offenses when such offenders are convicted either:

_____ Under the laws of Canada, United Kingdom, Australia, and New Zealand; or

_____ In any foreign country where the U.S. State Department, in its Country Reports

on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred. These annual reports can be found at <http://www.state.gov/g/drl/rls/hrrpt/>.

_____ **Military Offenses** Jurisdictions must register anyone convicted of a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. §951 note). Jurisdictions are encouraged to review Department of Defense Instruction (DoDI) 1325.7 and the current 10 U.S.C. §920 *et. seq.* to determine which UCMJ convictions will be appropriate for inclusion. The current version of DoDI 1325.7 can be found here: <http://www.dtic.mil/whs/directives/corres/pdf/132507p.pdf>.

_____ **State, Tribal, Territory and Foreign Offenses**

Jurisdictions are required to register any person who has been convicted of a criminal offense in any state, tribe, territory, or the District of Columbia, and any foreign country (subject to the limitations described above) that involves:

_____ Any conduct that by its nature is a sex offense against a minor

_____ Any conduct similar to that prohibited by the following Federal Offenses:

- _____ 18 U.S.C. §1591 (Sex Trafficking by Force, Fraud, or Coercion)
- _____ 18 U.S.C. §1801 (Video Voyeurism of a Minor)
- _____ 18 U.S.C. §2241 (Aggravated Sexual Abuse)
- _____ 18 U.S.C. §2242 (Sexual Abuse)
- _____ 18 U.S.C. §2244 (Abusive Sexual Contact)
- _____ 18 U.S.C. §2422(b) (Coercing a Minor to Engage in Prostitution)
- _____ 18 U.S.C. §2423(a) (Transporting a Minor to Engage in Illicit Conduct)

_____ Any type or degree of genital, oral, or anal penetration

_____ Any sexual touching of or contact with a person's body, either directly or through the clothing

_____ Criminal sexual conduct involving a minor (where the elements of the offense involve physical contact with the victim), or the use of the internet to facilitate or attempt such conduct

_____ Including offenses whose elements involve using other persons in prostitution -- such as provisions defining crimes of "pandering," "procuring," or "pimping" in cases where the victim was below 18 at the time of the offense

- _____ False imprisonment or a minor
- _____ Kidnapping of a minor
- _____ Possession, production, or distribution of child pornography
- _____ Solicitation of a minor to practice prostitution
- _____ Solicitation to engage a minor in sexual conduct (this should be understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct)
- _____ Use of a minor in a sexual performance

IV. TIERING OF OFFENSES

Once a jurisdiction determines which sex offenses will require registration, it will have to decide at what 'level' of registration those convicted of each particular offense must register. SORNA establishes a baseline or minimum standard by way of a 3-tier classification system.

For the purposes of tiering sex offenses:

- **Minor** is defined as an individual under the age of 18
- **Sexual contact** means offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing
- **Sexual act** means offenses involving
 - Any direct touching of the genitals of a person under 16; or
 - Oral, anal, or vaginal penetration of any kind which occurs:
 - when the victim is under 13
 - by force
 - by way of threat or intimidation
 - when the victim has been rendered unconscious
 - when the victim is incapable of appraising the nature of their conduct;
 - when the victim is physically incapable of communicating non-consent;
 - when a drug or intoxicant has been administered which substantially impairs the ability of the other person to appraise or control their conduct

Tier I Offenses

_____ Convictions that have an element involving a **sexual act** or **sexual contact** with another, that are not included in either Tier II or Tier III

_____ Convictions that involve:

_____ False Imprisonment of a **Minor**

_____ Video Voyeurism of a **Minor**

_____ Possession or Receipt of Child Pornography

_____ The following Federal Offenses:

- _____ 18 U.S.C. §1801 (Video Voyeurism of a Minor)
- _____ 18 U.S.C. §2252 (Receipt or Possession of Child Pornography)
- _____ 18 U.S.C. §2252A (Receipt or Possession of Child Pornography)
- _____ 18 U.S.C. §2252B (Misleading Domain Name)
- _____ 18 U.S.C. §2252C (Misleading Words or Digital Images)
- _____ 18 U.S.C. §2422(a) (Coercion to Engage in Prostitution)
- _____ 18 U.S.C. §2423(b) (Travel with the Intent to Engage in Illicit Conduct)
- _____ 18 U.S.C. §2423(c) (Engaging in Illicit Conduct in Foreign Places)
- _____ 18 U.S.C. §2424 (Filing Factual Statement about Alien Individual)
- _____ 18 U.S.C. §2425 (Transmitting Information about a Minor to further Criminal Sexual Conduct)

_____ Any comparable military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. §951 note)

Tier II Offenses

_____ **Recidivist Offender** A person previously convicted of a tier I offense whose current sex offense conviction is punishable by more than one year imprisonment

_____ Convictions that involve:

- _____ The use of **minors** in prostitution (to include solicitations)
- _____ Enticing a **minor** to engage in criminal sexual activity
- _____ A non-forcible **Sexual Act** with a **minor** 16 or 17 years old
- _____ **Sexual contact** with a **minor** 13 or older
- _____ The use of a **minor** in a sexual performance
- _____ The production or distribution of child pornography

_____ The following Federal Offenses:

- _____ 18 U.S.C. §1591 (Sex Trafficking by Force, Fraud, or Coercion)
- _____ 18 U.S.C. §2243 (Sexual Abuse of a Minor)
- _____ 18 U.S.C. §2244 (Abusive Sexual Contact, Victim 13 or Older)
- _____ 18 U.S.C. §2251 (Sexual Exploitation of Children)
- _____ 18 U.S.C. §2251A (Selling or Buying of Children)
- _____ 18 U.S.C. §2252 (Sale or Distribution of Child Pornography)
- _____ 18 U.S.C. §2252A (Sale or Distribution of Child Pornography)
- _____ 18 U.S.C. §2260 (Producing Child Pornography for Import)
- _____ 18 U.S.C. §2421 (Transportation for Prostitution)
- _____ 18 U.S.C. §2422(b) (Coercing a Minor to Engage in Prostitution)
- _____ 18 U.S.C. §2423(a) (Transporting a Minor to Engage in Illicit Conduct)

_____ Any comparable military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. §951 note)

Tier III Offenses

_____ **Recidivist Offender** A person previously convicted of a tier II offense whose current sex offense conviction is punishable by more than one year imprisonment

_____ Convictions by that involve:

- _____ Non-parental kidnapping of a **minor**
- _____ Any **Sexual Act** with another (as defined on page 5)
- _____ **Sexual contact** with a minor under 13

_____ The following Federal Offenses:

- _____ 18 U.S.C. §2241 (Aggravated Sexual Abuse)
- _____ 18 U.S.C. §2242 (Sexual Abuse)
- _____ 18 U.S.C. §2244 (Abusive Sexual Contact, victim under 13)

_____ Any comparable military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. §951 note)

IV. REQUIRED REGISTRATION INFORMATION

Once a jurisdiction determines which sex offense convictions will require what level of registration, the question turns to what information they are required to collect for their sex offender registry. These requirements are *different from* the more limited list of items that are required to be displayed via a jurisdiction's public sex offender registry website.

_____ **Digitized** All information is to be available in digitized format. Jurisdictions will need

to maintain all required registration information in a digitized form that will enable it to be immediately accessed by or transmitted to various entities. The jurisdiction's registry must be an electronic database, and descriptions of the required types of information should consistently be understood as referring to digitizable information rather than hard copies or physical objects.

However, when items and/or data might be stored in separate databases (such as DNA profiles in CODIS, fingerprints in IAFIS, or professional licensing information with a separate board or committee), it is sufficient if a jurisdiction provides an identification number or some other indicator of precisely where such registration information might be found, and in what database.

As specified below, the information required to be included on a jurisdiction's registry fall into 20 primary headings:

1. Criminal History
2. Date of Birth
3. DNA Sample
4. Driver's License or Identification Card
5. Employment Information
6. Fingerprints
7. Internet Identifiers
8. Name
9. Palm Prints
10. Passport and Immigration Documents
11. Phone Numbers
12. Photograph
13. Physical Description
14. Professional Licensing Information
15. Resident Address
16. School Information
17. Social Security Number
18. Temporary Lodging Information
19. Text of Registration Offense
20. Vehicle Information

SORNA minimum standards require jurisdictions to include the following specific information in their registry:

_____ **Criminal history**

- _____ Date of all arrests
- _____ Date of all convictions
- _____ Status of parole, probation, or supervised release

- ☐ Registration status
- ☐ Outstanding arrest warrants

☐ **Date of Birth**

- ☐ Actual date of birth
- ☐ Purported date of birth

☐ **DNA sample**

- ☐ A DNA sample must be taken, or must have been taken, from the sex offender for purposes of analysis and entry of the resulting DNA profile into the Combined DNA Index System (CODIS)
- ☐ Samples are being analyzed and submitted for entry to CODIS

☐ **Driver's License or ID Card**

- ☐ A photocopy of a valid driver's license or identification card (to include a tribal identification card) issued to the sex offender by a jurisdiction

☐ **Employment Information**

- ☐ Employer Name (Business Name)
- ☐ Employer Address
- ☐ Transient/day labor employment information collected

☐ **Fingerprints**

- ☐ Fingerprints taken and submitted to IAFIS

☐ **Internet Identifiers**

- ☐ Email addresses
- ☐ Instant Message addresses/identifiers
- ☐ Any other designations or monikers used for self-identification in Internet communications or postings
- ☐ All designations used by sex offenders for purposes of routing or self-identification in Internet communications or postings

☐ **Name**

- ☐ Primary, given name
- ☐ Nicknames, aliases, pseudonyms generally, regardless of context in which it is used
- ☐ Ethnic or Tribal names by which they are commonly known

_____ **Palm Prints**

- _____ Palm Prints taken and submitted to the FBI Central Database (Next Generation Identification Program)

_____ **Passports and Immigration Documents**

- _____ Digitized copies of passports
_____ Digitized copies of immigration documents

_____ **Phone Numbers**

- _____ Telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications
_____ Land line telephone numbers
_____ Cell phone telephone numbers

_____ **Photograph**

- _____ Updated digitized photograph collected unless appearance has not changed significantly, on the following schedule:
- _____ Tier I Offender: Once every Year
 - _____ Tier II Offender: Once every 6 Months
 - _____ Tier III Offender: Once every 90 Days

_____ **Physical Description**

- _____ Physical description of the sex offender
_____ General description of physical appearance or characteristics
_____ Any identifying marks, such as scars or tattoos, etc.

_____ **Professional Licensing Information**

- _____ Concerning all licensing of the registrant that authorizes the registrant to engage in an occupation or carry out a trade or business

_____ **Resident Address**

- _____ Address of each residence at which the sex offender resides or will reside
_____ If no permanent residence, location or description that identifies where the sex offender "habitually lives"

_____ **School Address**

____ School Name
____ School Address

____ **Social Security Number**

____ Valid social security number
____ Purported social security number(s)

____ **Temporary lodging information**

- when an offender will be absent from his or her residence for 7 days or more

____ Identifying information (location) of temporary location(s)
____ Dates of travel

____ **Text of Registration Offense**

____ The text of the provision of law defining the offense for which the sex offender is registered

____ **Vehicle Information**

____ License plate number; and
____ Registration number or identifier
____ Of all of the following vehicles owned or operated by the offender, whether for:

____ Work or
____ Personal use

Including:

____ Land Vehicles
____ Aircraft
____ Watercraft

____ Description of all vehicles identified above
____ Permanent or frequent location where all vehicles are kept

V. WHERE REGISTRATION IS REQUIRED

____ **Jurisdiction of Conviction** Initial registration is required in the jurisdiction where the sex offender was convicted even if the sex offender will not be residing there

_____ **Jurisdiction of Incarceration** Initial registration is required in the jurisdiction where a sex offender is incarcerated when completing their sentence, regardless if it is the jurisdiction of conviction or will be the jurisdiction of residence, employment, or school attendance

_____ **Jurisdiction of Residence** All sex offenders who **reside** in the jurisdiction are required to register

_____ **Jurisdiction of Employment** All sex offenders who are **employees** in the jurisdiction are required to register

- **Employee:** Includes an individual who is self-employed or works for any other entity, whether compensated or not

_____ **Jurisdiction of School Attendance** All sex offenders who are **students** in the jurisdiction are required to register

- **Student** An individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education

VI. INITIAL REGISTRATION: GENERALLY

Timing of Initial Registration

A sex offender is required to register at particular times, depending on whether he or she is incarcerated within the jurisdiction, sentenced within the jurisdiction, or arriving from another jurisdiction.

_____ **When a sex offender is incarcerated within the jurisdiction**

_____ Registration must occur before release from "imprisonment" for the registration offense

- **Imprisonment** Refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly rather than in a narrow technical sense, to include for example confinement in a state "prison" as well as in a local "jail".

_____ **When a sex offender is sentenced within the jurisdiction, but not incarcerated**

_____ Registration must occur within three business days of sentencing for the

registration offense

_____ **When a sex offender relocates from another jurisdiction** *i.e.*, when an offender is convicted and/or sentenced in another state, territory, tribe, or country, or in a federal or military court, and chooses to reside, work, or attend school in a jurisdiction.

_____ Registration must occur within three business days of the sex offender establishing residence, employment, or school attendance within the jurisdiction

Duties of a Jurisdiction When an Offender Initially Registers

- _____ Inform the sex offender of his or her duties under SORNA
- _____ Explain the SORNA duties to sex offender
- _____ Require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement
- _____ Ensure that the sex offender is registered

VII. INITIAL REGISTRATION: RETROACTIVE CLASSES OF OFFENDERS

SORNA, by its terms, applies to all sex offenders, regardless of when they were convicted. Jurisdictions are required to **recapture** (*i.e.*, appropriately classify and register) certain offenders, including those who previously may have not been required to register, but who would be required to register under the jurisdiction's new SORNA-implementing legislation.

_____ There must be a procedure in place to **recapture** three categories of sex offenders, which are those sex offenders who are:

- _____ Currently incarcerated or under supervision, either for the predicate sex offense or for some other crime;
- _____ Already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those sex offenders who
- _____ Reenter the jurisdiction's criminal justice system because of a conviction for some other crime (whether or not it is a sex offense)

The initial registration of these **recaptured** offenders must take place within a certain amount of time, depending on the tier classification of the sex offender:

_____ Timing of Recapture (from date of implementation of SORNA in the jurisdiction)

- _____ Tier I Offenders: Within One Year
- _____ Tier II Offenders: Within 6 Months
- _____ Tier III Offenders: Within 3 Months

VIII. KEEPING THE REGISTRATION CURRENT

The duties of a sex offender to a registration jurisdiction will depend on whether the jurisdiction is the:

- Residence Jurisdiction (the jurisdiction in which the offender resides), the
- Employment Jurisdiction (the jurisdiction in which the offender is an employee), or the
- School Jurisdiction (the jurisdiction in which the offender is a student)

This section addresses the duties of a sex offender to each of the preceding types of jurisdictions regarding the sex offender's duty to keep their registration current.

Residence Jurisdiction

When a sex offender **resides** in a jurisdiction, that sex offender must do the following to keep their registration current, in addition to making the required verification appearances described in part X, below:

_____ Immediately appear **in-person** to update any of the following information:

- _____ Name
- _____ Residence
- _____ Employment
- _____ School Attendance
- _____ Termination of residence

_____ Immediately update any changes to the following information (an in-person appearance is not required):

- _____ Email addresses
- _____ Instant Message addresses
- _____ Any other designations used in internet communications, postings, or telephone communications
- _____ Vehicle Information
- _____ Temporary Lodging Information
- _____ Upon receipt of this information, the jurisdiction must immediately notify the jurisdiction in which the offender will be temporarily staying

Duties of the Residence Jurisdiction When An Offender Intends to Relocate to Another Country

If the residence jurisdiction is notified that the offender intends to commence residence, school, or employment outside of the United States, in addition to any other community notification requirements, it must also:

- ☐ Immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information
- ☐ Immediately notify the U.S. Marshals Service
- ☐ Immediately update NSOR Information

Employer Jurisdiction

When an offender is employed in a jurisdiction, but neither resides nor attends school there, that offender must do the following:

- ☐ Immediately appear **in-person** to update any of the following information:
 - ☐ Employment-related information in that jurisdiction
 - ☐ Termination of employment in that jurisdiction

School Jurisdiction

When an offender attends school in a jurisdiction, but neither resides nor works there, that offender must do the following:

- ☐ Immediately appear **in-person** to update any of the following information:
 - ☐ School-related information in that jurisdiction
 - ☐ Termination of school in that jurisdiction

X. VERIFICATION/APPEARANCE REQUIREMENTS

Sex offenders must register for a duration of time, and make in-person appearances at a frequency, that is driven by the tier of their sex offense.

☐ **Tier I Offenders**

- ☐ Once a year
- ☐ For 15 years

☐ **Tier II Offenders**

- ☐ Every 6 Months
- ☐ For 25 years

☐ **Tier III Offenders**

- ☐ Every 3 Months

_____ For life

Requirements for In-Person Regular Appearances

At the sex offender's regularly-scheduled in-person appearance, there are two things which must occur:

- _____ A current photograph must be allowed to be taken; and
- _____ The sex offender must review the existing registration information for accuracy

Reduction of Registration Periods

There are only two classes of sex offenders that SORNA permits to have a reduced registration period, provided certain requirements are met. The first is any Tier I offender, and the second is any Tier III offender who is required to register because of a juvenile adjudication.

Tier I Offender: An offender's registration and notification requirement may be terminated if the following conditions are met:

- _____ The sex offender has had ten years with a "clean record":
 - _____ Not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
 - _____ Not being convicted of any sex offense;
 - _____ Successful (without revocation) completion of any periods of supervised release, probation, and parole;
 - and**
 - _____ Successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. (42 USC §16915(b)(1))

Tier III Offender: An offender's registration and notification requirement may be terminated if the following conditions are met:

- _____ The sex offender is required to register based on a delinquency adjudication for an offense which required Tier III registration
- _____ The sex offender has had twenty-five years with a "clean record":
 - _____ Not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
 - _____ Not being convicted of any sex offense;
 - _____ Successful (without revocation) completion of any of supervised release, probation, and parole;
 - and**

- _____ Successful completion of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. (42 USC §16915(b)(1))

XI. REGISTRY WEBSITE REQUIREMENTS

Every jurisdiction will need to maintain a public sex offender registry website, as specified below.

- _____ The jurisdiction must maintain a public sex offender registry website. This website must contain the information detailed below on each sex offender in the registry.

- *Exception:* Information about a tier I sex offender convicted of an offense other than a “specified offense against a minor” as defined in 42 U.S.C. §16911(7) may be excluded from a jurisdiction’s public sex offender registry website.

- _____ The jurisdiction’s public sex offender registry website must contain the following basic functions and materials:

- _____ The jurisdiction must participate fully in the National Sex Offender Public Website, including taking the necessary steps to enable all field search capabilities required by NSOPW, including but not limited to:

- _____ Name;
 - _____ County, City or Town;
 - _____ Zip Code; and
 - _____ Geographic Radius

- _____ Links to sex offender safety and education resources

- _____ Instructions on how to seek correction of information that an individual contends is erroneous.

- _____ A warning that information on the site “should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address...and that any such action could result in civil or criminal penalties.”

- _____ Search-field capability:

- _____ Name.
 - _____ County, City and/or Town
 - _____ Zip Code

_____ Geographic Radius

Ten Core Required Items on Public Registry Websites

_____ **1. Absconder**

- when the offender is in violation or cannot be located, the website must note this fact

_____ **2. Criminal History**

- any other sex offense for which the sex offender has been convicted

_____ **3. Current Offense**

- the sex offense for which the offender is registered

_____ **4. Employer address**

_____ **5. Name**

- including all aliases

_____ **6. Photograph:**

- a current photograph of the offender

_____ **7. Physical description**

_____ **8. Resident Address**

- including any information about where the offender "habitually lives"

_____ **9. School address**

_____ **10. Vehicle(s) information, including:**

_____ license plate number(s); and
_____ vehicle description(s)

Information That Is NOT Permitted to be Displayed on Public Websites

_____ **Criminal History:** any arrests not resulting in conviction

_____ **Social Security Number**

- _____ Travel and Immigration Document Numbers
- _____ Victim Identity
- _____ Internet Identifiers

Special Issue: Witness Protection

- _____ Jurisdictions are permitted and encouraged to make provision in their laws and procedures to accommodate consideration of the security of such individuals and to honor requests from the United States Marshals Service and other agencies responsible for witness protection in order to ensure that their original identities are not compromised.

XII. COMMUNITY NOTIFICATION

Community Notification is a distinct requirement of SORNA, apart from the maintenance of a sex offender registry and a public sex offender registry website. In certain cases, jurisdictions will be required to disseminate information about sex offenders to agencies and individuals in the community, as indicated below.

Law Enforcement Community Notification

- _____ Whenever a sex offender:

- _____ initially registers in a jurisdiction, or
- _____ updates their registration information in a jurisdiction,

The following actions are required to be taken by a jurisdiction:

- _____ The jurisdiction must immediately notify the following agencies of the initial registration or the changes to an offender's registration information, and make the updated information available to the following agencies:

- _____ NSOR

- _____ Each 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.

- _____ Law Enforcement and Supervision Agencies:

- _____ Police Departments
- _____ Sheriffs' Offices
- _____ Prosecutor's Offices
- _____ Probation Agencies

_____ Any other agencies with criminal investigation, prosecution, or sex offender supervision functions

_____ National Child Protection Act agencies:

_____ Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a)

General Community Notification

Whenever a sex offender:

_____ initially registers in a jurisdiction, or
_____ updates their registration information in a jurisdiction,

And a jurisdiction follows the procedures outlined below, it will be sufficient to comply with the general community notification portion of SORNA:

_____ An automated notification system is adopted by the jurisdiction that incorporates the following features:

_____ Any initial registration, and any changes in a sex offender's registration information, are posted to the jurisdiction's public registry website within three business days

_____ An email notification (including a sex offender's identity) is made available to the general public whenever a sex offender commences

_____ residence,
_____ employment, or
_____ school attendance
_____ within a certain zip code or geographic radius

- Jurisdictions are not required to adopt an automated notification system in order to implement this general community notification portion of SORNA. If a jurisdiction chooses not to do so, however, it will still be held to SORNA's baseline requirements. Please contact the SMART office for assistance in determining which alternate procedures would substantially implement this portion of SORNA.

XIII. FAILURE TO REGISTER AS A SEX OFFENDER: STATE PENALTY

_____ Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal

penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of their registration and notification requirements in a jurisdiction.

XIV. WHEN SEX OFFENDER FAILS TO APPEAR FOR REGISTRATION

When a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in their jurisdiction, and that offender fails to appear for registration as required, the jurisdiction receiving that notice must do the following:

- _____ Inform the jurisdiction that provided the notification (that the offender was to commence employment, residence, and/or school in the new jurisdiction) that the sex offender failed to appear for registration

XV. WHEN A JURISDICTION HAS INFORMATION THAT A SEX OFFENDER MAY HAVE ABSCONDED

When a jurisdiction has information that a sex offender may have absconded, certain actions must be taken.

- _____ An effort must be made to determine whether the sex offender has actually absconded
- _____ If no determination can be made, then a law enforcement agency with jurisdiction to investigate the matter must be notified
- _____ If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the authorities that provided the notification must be informed that the sex offender has failed to appear and register
- _____ If an absconded sex offender cannot be located, then the jurisdiction must take the following steps:
 - _____ The information in the registry must be revised to reflect that the sex offender is an absconder or unlocatable
 - _____ A warrant must be sought for the sex offender's arrest, if the legal requirements for doing so are satisfied
 - _____ The United States Marshals Service, which is the lead federal agency for investigating sex offender registration violations, must be notified
 - _____ The jurisdiction must update NSOR to reflect the sex offender's status as an absconder or unlocatable
 - _____ The jurisdiction must enter the sex offender into the National Crime Information Center Wanted Person File (assuming issuance of a warrant meeting the requirement for entry into that file)