



April 2017

SORNA Implementation Review State of Montana – Revised

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 State of Montana 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 Montana's SORNA substantial implementation packet and has found that Montana has not substantially implemented SORNA.

In February 2013, the Montana Department of Justice requested a substantial implementation review and provided legislation and other materials. In addition, email and phone correspondence with the Montana Department of Justice filled in gaps in information and procedure, which informed our review. In 2015, Montana requested an updated substantial implementation review, based on laws passed since our first review.

Our review of the submitted materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 15 sections addressing the SORNA requirements. Under each section, we indicate whether Montana meets or does not meet the SORNA requirements of that section, or deviates from the SORNA requirements in a way that does not substantially disserve SORNA's requirements. Montana is encouraged to focus on the sections where the jurisdiction *has not* met SORNA's requirements, and to work toward rectifying the issues identified in those sections in order to achieve substantial implementation of SORNA.

Montana is also encouraged to work toward rectifying the deviations which do not substantially disserve the purposes of SORNA in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

We encourage you to review the information below, share it with relevant stakeholders in the state, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his or her information in a jurisdiction, that the initial registration information or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Montana meets all of the SORNA requirements in this section.

II. Offenses That Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture

certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

A. Montana Offenses

Montana captures most of its state offenses required to be registered by SORNA; however, in order to fully implement SORNA's requirements, Montana must also register individuals convicted of the following offenses:

§ 45-5-502(1) Sexual Assault

Montana registers persons convicted of this offense 1) if the victim is less than 16 and the offender is 3 or more years older than the victim, 2) if the offender inflicts bodily injury upon anyone in the course of the committing the offense, or 3) if the offender is a licensed professional under Title 37 of the Montana Code and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury.¹ SORNA requires registration for this offense regardless of the age of the victim or the specific circumstances of the offense.

§ 45-5-622(2)(b)(ii) Endangering Welfare of Children

When this offense includes an enticement of a minor to engage in sexual conduct, this is a registerable offense under SORNA.

§ 45-5-627(1)(a) Ritual Abuse of Minor

B. Offenses of Other SORNA Registration Jurisdictions

Montana registers any offender who is convicted in another state, territory or tribe of an offense "reasonably equivalent" to a Montana-registerable offense. In addition, any offender who was required to register as a sex offender in the state, territory or tribe of conviction is required to register in Montana.

C. Federal Offenses

Montana registers any offender who is convicted in federal court of an offense "reasonably equivalent" to a Montana-registerable offense. In addition, any federally convicted offender who was required to register as a sex offender by the sentencing court is required to register in Montana.²

¹ Title 37 includes professionals such as nurses, physical therapists, chiropractors, psychologists, counselors, social workers, massage therapists and addiction counselors.

² Specifically, Montana requires registration for any person convicted of an offense "for which the offender was required to register as a sexual offender after an adjudication or conviction."

D. Military Offenses

Montana registers any offender who is convicted in military court of an offense “reasonably equivalent” to a Montana-registerable offense. In addition, any military-convicted offender who was required to register as a sex offender by the sentencing court is required to register in Montana.

E. Juvenile Adjudications

Montana registers all juveniles adjudicated delinquent of any sex offense.

These deviations do not substantially disserve the purposes of the SORNA requirements in this section.

III. **Tiering of Offenses**

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Montana’s placement of these statutes within the SORNA three tier levels (see Appendix I, “Montana State Statutes”).

Montana requires all of its offenders to register for life.

Montana meets all of the SORNA requirements in this section.

IV. **Required Registration Information**

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

SORNA requires sex offender registration information under 22 primary categories. Montana properly collects all of this information except for the following items:

1. Palm Prints: Only offenders who are incarcerated with the Department of Corrections have their palm prints taken.
2. Immigration Documents: Montana does not collect immigration document information.
3. Temporary Lodging Information: Montana requires an offender who is traveling *within* the state to register with the county where they are physically present if they are away from their county of residence for more than 10 days, but does not address an offender’s responsibilities if they are out-of-state for more than seven days, as required by SORNA.

4. Text of the Registration Offense: Montana does not regularly capture the text of the offense for out-of-state offenses.

These deviations do not substantially disserve the purposes 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.

Montana meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

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 or her registration duties and require the offender to acknowledge in writing that he or she understands those duties.

Montana 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 re-enter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Montana registers all offenders who are sentenced, in custody or under the supervision of the Department of Corrections on or after July 1, 1989, and all juveniles adjudicated delinquent of a sex offense on or after May 11, 2007. In addition, juveniles adjudicated delinquent of a sex offense prior to May 11, 2007, were also subject to the possibility of registration, but only when the sentencing order of the court specifically stated that the offender was required to register.

These deviations do not substantially disserve the purposes 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.

Montana meets most of the requirements of this section. However, Montana does not require that phone or internet identifier information be updated immediately upon any changes.

These deviations do not substantially dissuade the purposes 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.

A. Duration of Registration

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.

All offenders in Montana are required to register for life.

B. Frequency of Registration

SORNA 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.

Montana determines the frequency of registration, as well as the availability of a procedure to reduce the duration of registration, based on the level of the offender. Montana classifies its offenders into levels 1, 2, and 3, on the basis of a risk assessment process. Low risk offenders are classified as level 1, moderate risk offenders as level 2, and high risk offenders as level 3. Offenders convicted in courts outside of Montana are classified as level 0 offenders (“non-designated”), unless the offender moves to Montana from a state where Montana recognizes the foreign tier level, or until such time as the Montana Attorney General or appropriate County Attorney petitions a District Court to assign a risk level designation.

Montana periodically mails offenders a verification form, depending on the level of the offender. Within 10 days of the receipt of the form, the offender must return it to the appropriate registration agency in person. Level 0 and level 1 offenders are sent a verification form annually, level 2 offenders are sent a verification form every six months, and level 3 offenders are sent a verification form every three months.

C. Reduction of Registration Periods

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

Montana provides for the reduction of registration periods for level 0 and level 1 offenders, allowing such offenders to reduce their duration of registration to 10 years under certain circumstances. Some level 2 offenders are also permitted to reduce their registration period to 25 years under certain circumstances.

D. Clean Record Requirement

Montana does not require that a sex offender successfully complete, *without revocation*, any period of supervised release, probation, or parole in order to qualify for a registration period reduction. A petition for relief from the duty to register is heard before the District Court and may be granted upon a finding that

1. The offender has remained a law-abiding citizen; and
2. Continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

Because Montana bases sex offenders’ frequency of registration and the availability of reduced registration periods on a risk assessment process, Montana does not meet 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.

Montana varies the amount of information available on its website based on the risk assessment level of the offender. Montana posts the following information on its public registry website for all offenders:

1. Name, date of birth and residence address
2. Conviction(s) that qualified the offender for registration
3. Photograph and physical description
4. The agency with which the offender is registered
5. Sentencing date

In addition, certain offenders will have additional information disclosed on the public registry website, as follows:

A. Level 1 Sexual Offenders with a Minor Victim and All Level 2 Sexual Offenders

1. The type of victim targeted by the offense for which the offender is registered
2. A description of the offender's vehicle and license plate number

B. Level 3 Sexual Offenders

1. The type of victim targeted by the offense for which the offender is registered
2. A description of the offender's vehicle and license plate number
3. The offender's sentence and release dates, and the community where the offense occurred

However, Montana does not display the following for any offender:

1. Employer address; or
2. School address.

Because Montana does not post employer address and school address information on its public registry website and does not otherwise make available any information regarding an offender's employment or school enrollment, Montana does not meet the SORNA requirements of this section.

XI. Community Notification

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

Montana meets the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: State Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Montana meets all of the SORNA requirements in this section.

XIII. 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.

Montana meets all of the SORNA requirements in this section.

XIV. 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.

Montana indicates that if an offender absconds, the local registration agency issues a warrant, and Montana directly notifies the United States Marshals Service of absconded offenders.

Montana meets all of the SORNA requirements in this section.

XV. Tribal Considerations

There are six federally recognized Indian tribes currently operating as SORNA jurisdictions in Montana:

1. Blackfeet Tribal Business Council
2. Chippewa Cree Business Committee
3. Crow Tribal Council
4. Fort Belknap Community Council
5. Fort Peck Tribal Executive Board
6. Northern Cheyenne Tribal Council

Three of these tribes have substantially implemented SORNA: Chippewa Cree Business Committee, Crow Tribal Council and Fort Peck Tribal Executive Board. The other three tribes are in varying stages of SORNA implementation.

One additional tribe, the Confederated Salish and Kootenai Tribes, has opted out of being a SORNA registration jurisdiction.

There are no current MOU's or other agreements between any of the SORNA tribes and Montana regarding the submission or transmission of biometric information or any other information-sharing arrangements.

In order to substantially implement SORNA, Montana will need to demonstrate that it is handling registration and notification duties for those sex offenders living, working or attending school on the lands of the tribes that have either delegated their registration duties to the state or otherwise opted out of being a SORNA registration jurisdiction. In addition, Montana would also be required to demonstrate cooperation with the tribes that are functioning as SORNA registration jurisdictions, to the extent that those tribes seek cooperation from the state.

The primary State contacts for tribal issues are below:

Jamie Lavinder and Suzanne Anders
Montana Division of Criminal Investigation
Sexual or Violent Offender Registry Analysts
406-444-7068
406-444-9877

The points of contact for the tribes are below:

Blackfeet Tribal Business Council
Frank Goings
SORNA Compliance Officer
725 Southwest Boundary St.
P.O. Box 850
Browning, MT 59417
406-338-4000 ext. 207

Chippewa Cree Business Committee
Mary Gallegos
Project Coordinator
31 Agency Square
Box Elder, MT 59521
406-395-4728/5348

Crow Tribal Council
Kevin Howe
SORNA Compliance Officer
P.O. Box 399
Crow Agency, MT 59022
406-638-2490

Fort Belknap Community Council
Teschaw Hawley
Compliance Program Manager
868 Agency Main St.
Harlem, MT 59526
406-353-2624

Fort Peck Tribal Executive Board
Bruce Bauer
SORNA Compliance Officer
P.O. Box 934
613 Seventh Ave. S
Wolf Point, MT 59201
406-653-1494

Northern Cheyenne Tribal Council
Meredith McConnell
Director
Healing Hearts and Domestic Violence
P.O. Box 8
Lame Deer, MT 59043
406-477-6412

Conclusion

Montana has put forth good work and effort toward substantially implementing SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for Montana to substantially implement SORNA.

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

Appendix: Montana State Statutes

The SMART Office has reviewed all of Montana's sex offense statutes and has identified Montana's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). It should be noted that SORNA requires all attempts, conspiracies, and solicitations to mirror requirements of the actual offense. Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Montana. For more guidance on SORNA classes of offenders, see 42 U.S.C. § 16911 and Section V (pages 21-25) of the National Guidelines for Sex Offender Registration and Notification (June 2008).

In reviewing Montana's statutes, the SMART Office understands that Montana requires all of its sex offenders to register for life, and utilizes a risk assessment process to determine the frequency of verification, the amount of information displayed on the public registry website and when and whether an individual may petition to be relieved from their obligation to register.

SORNA Tier I Offenders

SORNA requires that tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Montana's statutes would require, at a minimum, tier I registration requirements under SORNA.

§ 45-5-502(1)	Sexual Assault
§ 45-5-301	Unlawful Restraint (non-parental, victim under 18)
§ 45-5-601(3)	Prostitution, victim under 18
§ 45-5-625(1)(e)	Sexual Abuse of Children (Possession of Child Pornography)

SORNA Tier II Offenders

SORNA requires that tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Montana's statutes would require, at a minimum, tier II registration requirements under SORNA.

§ 45-5-502(3)	Sexual Assault
§ 45-5-504(3)	Indecent Exposure (victim under 16 and the offender is four or more years older than the victim)
§ 45-5-507	Incest (sexual intercourse), victim 16 or 17
§ 45-5-507	Incest (sexual contact), victim 13-17
§ 45-5-602	Promoting Prostitution, victim under 18
§ 45-5-603	Aggravated Promotion of Prostitution, victim under 18
§ 45-5-625	Sexual Abuse of Children (except subsection (1)(e), see tier I, above)
§ 45-5-704	Sexual Servitude, victim under 18
§ 45-5-705	Patronizing Victim of Sexual Servitude, victim under 18

SORNA Tier III Offenders

SORNA requires that tier III offenders register for life and quarterly verify registration information. The following offenses listed in Montana's statutes would require, at a minimum, tier III registration requirements under SORNA.

§ 45-5-302	Kidnapping (non-parental, victim under 18)
§ 45-5-303	Aggravated Kidnapping (non-parental, victim under 18)
§ 45-5-503	Sexual Intercourse Without Consent
§ 45-5-507	Incest (sexual intercourse), victim under 16
§ 45-5-507	Incest (sexual contact), victim under 13
§ 45-5-627(1)(a)	Ritual Abuse of Minor

Further Review

Montana also requires registration for the following offense; however, without the commission of (or the attempt or conspiracy to commit) a sex offense as defined by SORNA, this offense does not require registration under SORNA:

§ 45-5-504(1), (2)(c) Indecent Exposure