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## Sex Offender Policy Board

# Washington's Compliance with SORNA Findings and Recommendations by the Sex Offender Policy Board

May 2016

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## EXECUTIVE SUMMARY

The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy."

In October 2015, Governor Jay Inslee submitted a request to the Board which contained several items. This report will address one item specifically, "Offer recommendations as to how the state should proceed in moving further into compliance with SORNA or, if the SOPB determines that it is not in the best interest of the state to adopt a requirement of SORNA, offer an analysis as to why".

The Sex Offender Registration and Notification Act (SORNA) is Title 1 of the Adam Walsh Act (AWA) signed into legislation by President George W. Bush on July 27<sup>th</sup>, 2006<sup>1</sup>. Named after a young boy who was the victim of a tragic abduction and murder, AWA was passed with a hope of protecting the public from sex offenders while also amending several loopholes within previous sex offender legislation. States were given three years to enact all portions of SORNA, and should they not they would risk losing 10% of their Omnibus Crime federal funding<sup>2</sup>.

The main purpose of SORNA was to standardize registration and notification policies and procedures in all 50 states. More specifically, SORNA requires that registerable sex offenders be placed in one of three tiers based solely on their offense. Tier one consists of those offenders who committed misdemeanors, while tier two houses offenders convicted of less serious felonies. Tier three is reserved for offenders who commit the severe sexual offenses. In addition, the tier to which an offender is assigned also determines their length of registration. The purpose of the tier system specifically, is to determine which offenders pose the highest risk to the community, and protect the public through community notification and registration<sup>3</sup>. While registration tiering is the main component of SORNA, there are several other pieces states are required to comply with:

- **Offenses to be Included in the Registry:** Outlines what offenses are registerable.
- **Tiering of Offenses:** Details the tiering requirements.
- **Required Registration Information:** Lists information law enforcement must collect when registering an offender.
- **Where Registration is Required:** Provides information on where an offender must

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<sup>1</sup> Freeman, Naomi J. and Sandler, Jeffery C. "The Adam Walsh Act: A False Sense of Security of an Effective Public Policy Initiative?" *Criminal Justice Policy Review* 21, 1 (2010) 31-49

<sup>2</sup> Adam Walsh Child Protection and Safety Act, H.R. 4472, 109<sup>th</sup> (2006)

<sup>3</sup> Freeman, Naomi J. and Sandler, Jeffery C. "The Adam Walsh Act: A False Sense of Security of an Effective Public Policy Initiative?" *Criminal Justice Policy Review* 21, 1 (2010) 31-49

register.

- **Initial Registration Generally:** Details how long an offender has to initially register.
- **Initial Registration: Retroactive Classes of Offenders:** Provides information on how to recapture offenders after implementing SORNA.
- **Keeping Registration Current:** Outlines requirements for how long an offender has to update their registration information once it changes.
- **Verification/Address Requirements:** Provides information on how often offenders must make in-person appearances, as well as for how long they are required to register.
- **Registry Website Requirements:** Lists items required to be shown on the public registry website.
- **Community Notification:** Outlines protocol for community notification procedures.
- **Failure to Register: State Penalty:** Mandates penalty requirements for Failure to Register.
- **When a Sex Offender Fails to Appear for Registration:** Protocol for if an offender fails to appear.
- **When a Jurisdiction has Information that a Sex Offender May Have Absconded:** Protocols for offenders who may have absconded.
- **Immediate Transfer of Information:** Requirements for transferring and updating registration information between jurisdictions.

Each of the components listed above has its own set of requirements for states to comply with and adhere to. In order to be found in substantial compliance with SORNA, states must demonstrate and overwhelming adherence to the “spirit” of these SORNA items.

Obtaining compliance with each of SORNA’s components would cost Washington approximately \$10,491,519 per a 2011 estimate<sup>4</sup>. The cost, coupled with mounting evidence that SORNA does not reduce recidivism and may in fact increase public safety risk, have led to the current recommendations. After many hours of research and deliberation the Board has determined that Washington’s current policies are more effective than SORNA at reducing recidivism, thereby increasing the safety of the public. As such, the SOPB is making no recommendations in which the state would be required to come into further compliance with SORNA.

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<sup>4</sup> Ewing, C. P. (2011). *Justice Perverted: Sex Offender Law, Psychology, and Public Policy*. New York: Oxford University Press.

## INTRODUCTION

Washington State has long been committed to protecting the safety and wellbeing of the general public from sexual offenders. As the first state to implement sex offender notification and registration laws in 1990, with the creation of the Washington State Community Protection Act, and the first state to civilly commit sexually violent predators, Washington has demonstrated an outstanding dedication to improving sex offender practices and policies. As a nationwide leader in sex offender management, Washington has continued to implement new enhancements based on the best, and most recent, research available.

As stated, the goals of the Adam Walsh Act (AWA) are similar to those of the original Community Protection Act of 1990. The AWA aims to provide further public protection by supporting the national implementation of a comprehensive sex offender registration and notification system. Also known as SORNA, the Sex Offender Registration and Notification Act targets potential loopholes in existing policy and strengthens the nationwide network of sex offender registration and notification programs. By strengthening programs in each state, SORNA aims to create a field of “best practices” in sex offender management nationwide. The Washington State Community Protection Act holds the criminal justice system accountable to the public by providing a sentencing system which protects citizens, ensures punishment which is proportionate to the seriousness of the offense and an offender’s criminal history, and reduces the risk of recidivism.

For more than two decades, Washington State has utilized an evidence-based risk assessment when determining the level of supervision an offender should receive in the community. Both experts in the field and stakeholders involved in the monitoring and tracking of sex offenders in the community strongly support the state’s decision to use a risk-based assessment, and believe this approach further promotes public safety.

SORNA requires sex offenders to be divided into three separate tiers, determined by their crime of conviction and sentence length. Offenders who fall into the same tier are all subject to the same minimum duration of registration, frequency of in-person verifications, and extent of website disclosure. Washington State is similar in that the duration of registration is offense-based, but frequency of in-person verification and the extent of information disclosure on the public website are determined by an evaluation of the offender’s risk level. Washington is also unique in that in addition to in-person verification procedures, Washington dispatches local law enforcement to an offender’s address to verify residency and additional information. In this regard, Washington is going above and beyond the spirit and intent of this SORNA requirement by enabling law enforcement to see an offender’s living situation and ensure residency. Washington uses evidence-based risk assessments, the offender’s criminal history, and other elements of their conduct in order to determine their level of risk. As such, this leveling system adheres to best practices within the field of sex offender management as numerous studies have found that a risk-based model is an effective predictor of recidivism, and is more effective than a fully offense-based model.

The following recommendations demonstrate that Washington has continued to utilize sex offender management practices and policies through the state, which are superior to those required by SORNA. As such, the Board recommends overall, that the state not seek further compliance with SORNA. SORNA has 14 main items which states must adhere with to be

found in substantial compliance; the following recommendations are written based on each individual requirement. After collecting information on Washington’s current sex offender policies, reviewing available literature and discussing various policy options, the SOPB submits the attached recommendations regarding Washington’s compliance with SORNA.

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## RECOMMENDATIONS

### Offenses that Must Be Included in the Registry

#### **Recommendation: No Action Required**

SORNA requires that jurisdictions have specific sex offenses in their registration schemes. SORNA defines a “sex offender” as anyone who has been convicted of a “sex offense”, and all sex offenses should be included in the registry. In addition, all attempts and conspiracies to commit a sex offense, all foreign sex offenses under the laws of Canada, the United Kingdom, Australia and New Zealand, as well as any military sex offenses, should be included in a jurisdiction’s sex offender registry.

Washington requires registration for all sex offenders convicted in the state, as well as for all adult and juvenile sex offenders with out-of-state convictions in which the offender would be required to register in the state the crime was committed. Offenders are also required to register for any federal, foreign military, or tribal conviction of a sex offense. Moreover, Washington requires all juvenile offenders to register regardless of their age.

As of August 2010, Washington was in compliance with a slight deviation for this requirement, though Senate Bill 5154, which passed in the spring of 2015, filled in several missing pieces. We believe these changes will allow Washington to be found in substantial compliance with this SORNA requirement. As such, the SOPB recommends that no action be taken on this item.

### Tiering of Offenses

#### **Recommendation: No Action Required**

SORNA requires a three-tier system in which an offender’s tier is determined solely upon the seriousness of their offense, with no consideration for risk, aggravating, or mitigating factors. Within each tier, all offenders are subjected to the same duration of registration, frequency of in-person verifications, and amount of information displayed on the public website. Washington uses an evidence-based risk assessment to determine how often an offender should submit to in-person verification and to what extent their information should be available on the public registry website. Washington is similar to SORNA when considering these, as the higher the risk to the community the more stringent the requirements. In addition, Washington considers criminal history and offender conduct when making leveling determinations.

In addition, Washington bases the duration of registration on the offense, with more serious offense classes receiving higher levels. This system is similar to SORNA’s tiering process. Since Washington considers other factors when determining an offender’s level, the final level may differ from the SORNA recommendation. It is important to note that Washington is currently not in compliance with the SORNA tiering requirement due to the use of the evidence-based risk assessment. Key stakeholders and those within the field are strongly in favor of continuing to remain out of compliance with this requirement, in order to make the most informed leveling decisions possible.

In recent years, a significant body of research has focused on whether or not SORNA tiering is an effective means of predicting both general and sexual recidivism. Several studies have found evidence in favor of the continued use of an evidence-based risk assessment, such as the STATIC-

99R, when leveling offenders. SORNA leveling has been found to have no significant correlation to either sexual or non-sexual rearrest (Freeman & Sandler, 2010). Conversely, other studies have found that the STATIC-99R either significantly or moderately predicts general, serious, and sexual recidivism (Barbaree, Seto, Langton, & Peacock, 2001) (Hanson, Helmus, & Thornton, 2010). In short, there is consistent support for using risk assessments such as the STATIC-99R when leveling offenders, versus complying with the SORNA requirement. Therefore, the SOPB recommends that Washington remain out of compliance with this item as implementation of the SORNA tiering system would be less effective at providing public safety than the current process. In addition, this would place more than 2,000 of Washington’s registered sex offenders in Tier 3, further diluting the effects of the registry.

#### Registration Requirements by Level/Tier

Level/Tier	SORNA Registration Requirement	Washington Registration Requirement
1 or I	15 years	10 years (Class C/ gross misdemeanor)
2 or II	25 years	15 years (Class B sex offenses)
3 or III	Lifetime Registration	Lifetime Registration (Class A, or aggravated offense, or more than one sexually violent offense against a victim who is a minor, or more than one sex offense).

#### In-Person Verification Requirements by Level/Tier

Level/Tier	SORNA In-Person Verification Requirements	Washington In-Person Verification Requirements
1 or I	Once every 12 months	Once every 12 months
2 or II	Once every 6 months	Once every 6 months
3 or III	Once every 3 months	Once every 3 months

### Required Registration Information

#### Recommendation: No Action Required

SORNA necessitates that all states collect specific pieces of information from sex offenders when registering with local law enforcement. SORNA requires the collection of driver’s license information, full address, name, aliases, internet identifiers, palm prints, passport information, immigration documents, phone numbers, and professional licensing and vehicle information. Washington State collects name and aliases, residential information, data and place of birth, place of employment, crime of conviction, date and location of conviction, social security number, and fingerprints.

Washington has done an excellent job ensuring efficiency and accuracy within sex offender records, and as such collects many of the items required by SORNA. Washington though, does not place an offender’s full address on the public registry website (only the one hundred block), nor does Washington collect palm prints and internet identifiers. Internet identifiers such as email address,

and chat names have been found to be an unnecessary use of resources. In addition to no favorable evidence, the Sex Offender Policy Board determined previously that the collection of these items would not be in the best interest of the state or enhance public safety as these items are incredibly easy for offender's to change. Thus, the SOPB recommends that no action be taken on this item which would move the state further towards compliance.

<b>SORNA Registration Requirement</b>	<b>Washington's Collection</b>
<b>Criminal History</b>	Collected
<b>Date of Birth</b>	Collected
<b>DNA Sample</b>	Collected
<b>Driver's License of ID Card</b>	Collected
<b>Employment Information</b>	Collected
<b>Fingerprints</b>	Collected
<b>Internet Identifiers</b>	NOT COLLECTED
<b>Name</b>	Collected
<b>Palm Prints</b>	NOT COLLECTED
<b>Passport and Immigration Documents</b>	Collected (if traveling out of country)
<b>Phone Numbers</b>	Collected
<b>Photograph</b>	Collected
<b>Physical Description</b>	Collected
<b>Professional Licensing Information</b>	NOT COLLECTED
<b>Residential Address</b>	Collected (not all information placed on public registry)
<b>School Information</b>	Collected
<b>Social Security Number</b>	Collected
<b>Temporary Lodging Information</b>	Collected
<b>Text of Registration Offense</b>	Collected
<b>Vehicle Information</b>	Collected by some agencies

### Location of Registration

#### **Recommendation: No Action Required (Full Compliance)**

SORNA requires that sex offenders register in the jurisdiction of conviction, residence, employment, and school attendance. For example, if an offender resides in one county and works in another, that offender would be required to register in both counties. Washington is in compliance with this requirement, as offenders are required to register with the incarcerating agency prior to release, and again with local law enforcement within three business days of release. Moreover, Washington also requires offenders to register in the jurisdiction where they work, or attend school (those in partial confinement must also register with local law enforcement). As Washington is in full compliance with this requirement, no action is necessary.

## Initial Registration: General Procedures

### **Recommendation: No Action Required (Full Compliance)**

SORNA requires that all sex offenders releasing from incarceration and into the community register with local law enforcement prior to their release. Offenders who were not incarcerated, should register with local law enforcement within three business days of sentencing for the registering offense. Finally, for those convicted of a foreign, federal, or military sex offense, registration should be completed within three business days of arrival to the community, or release.

Washington is in compliance with this requirement as offenders must register with their incarcerating agency prior to release, then again with local law enforcement upon release. For offenders who are in the community, they must complete registration within three business days of sentencing for the registering conviction. Moreover, those with federal, military, or foreign offenses must register within three business days and offenders who are in partial confinement must also register. Washington has been found to be in compliance with this item, and therefore no action is necessary.

## Initial Registration: Retroactive Classes of Offenders

### **Recommendation: No Action Required**

Upon implementation of SORNA there should be a process in place by which jurisdictions can recapture those who are, 1) incarcerated or under supervision either for the predicate sex offense or another crime, 2) already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law, and 3) reentering the jurisdiction's justice system due to another conviction. Those who are recaptured are subject to the regular initial registration procedure. As Washington State has not fully implemented SORNA, it is not possible for the state to reach adherence with this requirement. As such, the SOPB recommends that no action be taken towards reaching compliance for this item.

## Keeping Registration Current

### **Recommendation: No Action Required**

Sex offender registries are only as effective as the accuracy of the information they hold. Therefore, SORNA has strict requirements on the policies which keep this information accurate and up-to-date. SORNA requires offenders to appear immediately following any registration changes in person to update their name, address, employment information, school attendance, or lease termination information. In addition, offenders are required to update all other registration information as soon as possible, while also providing 21 days advance notice of international travel.

Recognizing the importance of accurate and up-to-date information, Washington State utilizes evidence-based risk assessments when determining how often an offender needs to update their information (should there be no changes before their next update time). Washington holds the same policies as required by SORNA, though uses an in-person address verification program. Washington allows local law enforcement to complete their in-person verifications at the offender's residence. The Board has determined that no action is needed on this item as completing verification

procedures at the offender's place of residence allows law enforcement to confirm their residency, thereby further enhancing public safety.

## Verification/Appearance Requirements

### **Recommendation: No Action Required**

SORNA requires that offenders register for a specific duration of time, as well as make in-person appearances at the registering agency (based on their conviction tier). SORNA allows for two types of offenders to petition for a reduced registration period. Tier I offenders may petition after 10 years, and Tier III required to register because of a juvenile adjudication may petition after 25 years with a clean record.

Washington determines duration of registration based on offense class and allows for those required to register due to an adjudication to apply for "relief of duty to register" after five years if age 15 or older, and after two years for all other juveniles. Please refer to the verification table above for information on how often Level 1, 2, and 3 offenders must participate in in-person verification. The SOPB has determined that no action is needed on this item as research and best practices have shown that current policies are more effective in reducing recidivism.

## Registry Website Requirements

### **Recommendation: No Action Required**

SORNA requires that each jurisdiction maintain a public sex offender registry website that provides the public with access to certain registration information. SORNA requires criminal history, current offense, employer address, name and aliases, photograph, physical description, resident address, school information and vehicle information be collected.

Washington has been found to not be in compliance with this indicator as our state only places an offender's one hundred block address on the public website. Additionally, while all offenders who are Levels 2 or 3, or Level 1 and out of compliance can be found on Washington's public registry website, Level 1 offenders who are in compliance do not have their information posted publicly. The Board has determined that no action is needed on this item as providing information on Level 1 offenders on the public site will make it more difficult for citizens to determine offenders who truly pose a threat to them.

## Community Notification

### **Recommendation: No Action Required**

SORNA requires that each jurisdiction have a process in place by which to disseminate specific and up to date information to other local jurisdictions. Moreover, certain information should also be made available to the public in an effort to improve public awareness. In general, SORNA requires a jurisdiction to make the appropriate changes to the public registry website within three business days, and send email notices to appropriate parties when an offender commences residence, employment, school attendance, or begins residing in the ZIP code.

Washington determines an offender's level of community notification by considering their risk to

sexually reoffend in the community at large. This is done by administering an evidence-based risk assessment and considering other aggravating and mitigating factors. While Washington was found to be in compliance with a slight deviation for this item, the Board is currently looking into the use of the SORNA Exchange Portal and based on their findings may provide further recommendations.

### **Failure to Register: State Penalty**

#### **Recommendation: No Action Required**

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 to register. Washington is in compliance with a slight deviation as juvenile or adult conviction of failure to register has a mandatory sentence of 12 months community custody for the first conviction, and 36 months for the second and subsequent convictions. The SOPB recommends that no action be taken on this item. Failure to Register (FTR) can be caused by any number of things, and relegating all those convicted of an FTR to serve at least one year will greatly impact the prison system and lead to additional costs for the state. In addition, community custody is determined by an offender's risk level, and is not mandatory.

### **When a Sex Offender Fails to Appear for Registration**

#### **Recommendation: No Action Required (Full Compliance)**

SORNA requires that if a sex offender should fail to appear for registration, the jurisdiction which provided the notification that the offender would be registering should be notified immediately. The offender's status in the public registry should also be updated, with this information forwarded to other jurisdictions and then the federal database. Washington is in compliance with this requirement as the jurisdiction an offender is moving from is responsible for the offender until their updated registration process is completed. Moreover, offenders are required to notify both the county they are leaving, and the one they will be registering with, prior to making the change. As Washington should be found to be in compliance, the Board recommends that no further action be taken.

### **When a Jurisdiction Has Information That a Sex Offender May Have Absconded**

#### **Recommendation: No Action Required (Full Compliance)**

SORNA requires that an effort should first be made to verify that the offender has absconded. If the absconded offender cannot be located, the registry information should be updated to reflect that the offender is an absconder, and a warrant for arrest should be sought. U.S. Marshal's Service must also be notified, and the jurisdiction must update the national registry to reflect the offender's status. Additional policies are required to ensure the appropriate follow-up procedures for when information is received that an offender violated the requirement to register in jurisdictions of employment or school attendance. Washington complies with this indicator as the Washington public registry is updated once it has been found that an offender has absconded. Furthermore, the statewide database allows for immediate communication with the U.S. Marshal's Office. Washington should be found to be in compliance with this item. As such, the Board recommends that no further action be taken.

## Immediate Transfer of Information

### **Recommendation: No Action Required (Full Compliance)**

SORNA requires that when an offender registers for the first time or updates their information, this material must be immediately shared with other jurisdictions where the offender is required to register. In addition, updated information should be provided to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Washington was found to be in compliance with SORNA's requirement for the immediate transfer of information as the use of a statewide database allows registration information to be available in real-time to other jurisdictions. Moreover, Washington requires the Washington State Patrol to forward all information in the database to the National Crime Information Center (NCIC), as well as the National Sex Offender Registry (NSOR) as soon as possible. As Washington was previously found to be in compliance with this item, the Board recommends that no action be taken.

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## CONCLUSION

In summary, the SOPB has worked diligently over the last several months in order to provide the most informed recommendations possible. While SORNA is a federal requirement, the Board has reviewed countless articles and studies, overall finding that the required policies are ineffective and in some cases add additional risk to public safety. As such, the SOPB recommends that Washington make no further efforts to come into compliance with the requirements of SORNA.

Moreover, the SOPB has made attempts to receive updated information from other states regarding their compliance efforts from the SMART Office to no avail. Without this information the Board has based their recommendations on the best research available. In some cases, states who have implemented SORNA have begun to back track. For example, South Carolina (Letourneau, Levenson, Bandyopadhyay, Sinha, & & Armstrong, 2010), Nebraska (Spohn, 2012), and New York (Freeman & Sandler, 2010) have all seen the release of peer-reviewed publications which analyze the effectiveness of SORNA policies. In short, these studies have similar findings which assert that SORNA is ineffective in reducing recidivism, may increase risk to the public, and leads to additional collateral consequences for registered sex offenders. These states have been found to be in substantial compliance with SORNA, and these articles were released following the SMART Office's compliance decision.

Washington has always led the nation in sex offender management, and has done so by staying apprised of the most relevant and updated research and modifying policies as necessary. With a goal of reducing the recidivism rates of convicted sex offenders, and continuing to put public safety first, the SOPB finds that further implementation of SORNA is not in the best interest of the state and may in fact lead to an increase in recidivism, an increase in Level 3 offenders, and a reduction in community safety.