



Significant Changes to the SORNA Guidelines

The proposed National Guidelines for Sex Offender Registration and Notification were issued by the Department of Justice in May of 2007. A comment period followed and, based in part on those comments, changes were made to the Final Guidelines. What follows is a summary of the significant changes as contained in the Final Guidelines.

Registration for Juvenile Adjudications of Delinquency

One of the areas receiving the most comments was the requirement that certain juvenile offenders who were adjudicated delinquent register as sex offenders under SORNA. Generally speaking, 42 USC §16911(8) requires registration for any juvenile age fourteen (14) or older who is adjudicated delinquent for an offense “comparable to or more serious than” the federal Aggravated Sexual Abuse statute, 18 USC §2241.

The Final Guidelines clarify these requirements. If jurisdictions register juveniles at least fourteen years old at the time of the offense who are adjudicated delinquent for an attempted, conspired, or completed offense that involves a “sexual act” by force, threat of serious violence, or rendering the victim unconscious or drugged, that will fulfill SORNA’s requirements for juvenile offenders. “Sexual Act” for purposes of this requirement, as clarified by the Final Guidelines, simply includes “any degree of genital or anal penetration, and any oral-genital or oral-anal contact.”

Determination of Tiers: Elements of the Offense at Conviction

An open question after the issuance of the proposed guidelines was whether an offense was to be tiered based on the elements of the offense at conviction or on the actual facts of the case. Prosecutors, defense attorneys, and judges all often want or need to amend charges for the purposes of plea negotiation, and many wondered whether those efforts would result in any change in registration requirements.

The Final Guidelines make it clear that “jurisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction.” However, there is an exception to this when the age of the victim might affect the tier of an offense. In that case, the ‘in fact’ age of the victim is what matters, regardless of the elements of the offense of conviction.

Determination of Tiers: Pre-SORNA Offenses

For purposes of recidivist enhancement and initial registration, jurisdictions will have to determine which tier to assign a violation of a given statute. The Final Guidelines state that pre-SORNA convictions must be taken into account in determining whether a recidivist registration enhancement applies. A conviction for a sex offense which occurred prior to SORNA’s enactment will, in many cases, also require registration. To determine the appropriate tier for a pre-SORNA offense, a jurisdiction is required simply to “rely on the methods and standards they normally use in searching criminal records and on the information appearing in the records so obtained” to determine tier level.

“Substantial Implementation”: Basic Requirements

The Final Guidelines make clear that the requirements of SORNA are a baseline that the jurisdictions *must* comply with. Jurisdictions that utilize a different foundational approach (classifying offenders based on a risk-assessment instead of the elements of their offenses, for example) will not be deemed to be in ‘substantial compliance’. Nevertheless, jurisdictions will retain some latitude with practical implementation issues, such as in-person verification.

Miscellaneous Provisions

The Final Guidelines provide a number of helpful clarifications, including:

Continuing registration in conviction jurisdiction: continued registration in the jurisdiction of conviction is never required if the sex offender does not reside, work, or attend school in that jurisdiction.

Day laborers: the location of a common ‘gathering point’ counts as a ‘workplace’ for registration purposes.

Driver’s licenses and ID cards: jurisdictions are not required to issue driver’s licenses or identification cards to sex offenders to whom they would not otherwise issue such documents in order to create that type of information for inclusion in their registry.

Imprisonment: clarified so that the term includes incarceration in either a federal, state, or local correctional facility, whether it is a prison or jail.

Information concerning where a person “will be” employed or attending school: SORNA will not require ‘speculative’ information.

In-person appearances for changes in registration information: the Final Guidelines give additional guidance as to when a sex offender has to appear in person to change registration information, and when jurisdictions may waive such a requirement.

Mandatory information for sex offender websites: the Final Guidelines list the “eight core types of information” that are required.

Residence as the place where a person ‘habitually lives’: the final definition of what constitutes “habitually lives” is left to the jurisdiction, within the confines of SORNA’s requirements.

Terminating presence in a jurisdiction: requires notification to the jurisdiction even when an offender does not know where they will be living, working, or going to school next. The guidelines also address what to do when a registrant dies.

Tolling of registration periods: jurisdictions will have the option of tolling registration during periods of incarceration subsequent to an offender’s initial requirement to register; however, they are not required to do so.

Tribal Requirements

The Final Guidelines also contain significant changes to the requirements involving tribal registration and convictions. Specifically, where a tribe has delegated registration authority to a State, the tribal authorities still retain their sovereign powers and, as such, may engage in whatever sex offender registration and notification functions they wish, so long as there is no conflict with the State’s responsibilities under SORNA. In addition, the Final Guidelines eliminate the portions of the proposed guidelines which allowed jurisdictions to choose to not require registration for certain tribal court convictions.

The proposed guidelines classified all tribal convictions as Tier I offenses. However, under the Final Guidelines, jurisdictions are free to require enhanced registration requirements based on tribal convictions. Tribes are also expressly permitted to enter into cooperative agreements for the purposes of discharging their registration and/or notification duties.