



September 22, 2011

SORNA Substantial Implementation Review Poarch Band of Creek Indians

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 Poarch Band of Creek Indians 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 the Poarch Band of Creek Indians's SORNA substantial implementation packet and has found that the Poarch Band of Creek Indians has substantially implemented SORNA.

On May 20, 2011, the Poarch Band of Creek Indians submitted a substantial implementation package that included eleven exhibits, including background information on the tribe and its criminal justice system, courts, and police department, policies and procedures regarding sex offender registration, the tribe's sex offender registration law and relevant additional laws, as well as forms and memoranda of agreement with other law enforcement agencies. In addition, email and phone correspondence with Keesha O'Barr, Tribal Court Administrator, and Lori Stinson, Tribal Attorney, filled in gaps in information and procedure, which informed our review.¹

Our review of these materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, which contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether the Poarch Band of Creek Indians meets the SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify where the departure(s) from a particular requirement does not substantially disserve the purposes of that requirement.

While the Poarch Band of Creek Indians is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, this is not required for substantial implementation purposes. This report is an exhaustive review and is intended to detail every area in which the tribe has not met SORNA standards.

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

¹The SMART Office had email and phone correspondence with Lori Stinson and Keesha O'Barr in August 2011.

I. Immediate Transfer of Information

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

The Poarch Band of Creek Indians meets all 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 the Poarch Band of Creek Indians' placement of these statutes within the SORNA three tier levels. The Poarch Band of Creek Indians correctly places its statutes within at least the minimum appropriate SORNA tiers, with the following exceptions:

- **18 USC § 1591** is listed as a Tier 1, rather than Tier 2.
- **18 U.S.C. §2243 (Sexual Abuse of a Minor or Ward)**. An early version of the model tribal code provided by the SMART Office listed 18 U.S.C. 2243 as a Tier 2 offense; however the Adam Walsh Act requires that this is categorized and treated as a Tier 3 offense.
- **18 USC § 2423(d)** is not included in the Tier lists, although it is included in the list of covered offenses.

In March 2011, the SMART Office issued corrections to Tiers 2 and 3 in the revised model code, which is available online here: http://www.smart.gov/pdfs/MTSOR_Code.pdf. The SMART Office recommends that amendments be made to Poarch Band of Creek Indians' Sex Offender Registry and Notification Act to reflect the correct tier.

While Poarch Band of Creek Indians does not meet the SORNA tiering requirement for the above offenses, these deviations do not substantially disserve the purposes of the requirements in this section.

IV. Required Registration Information

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

V. Where Registration is Required

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

SORNA requires that when an offender resides in a jurisdiction, that sex offender must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. 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, that sex offender must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

SORNA also requires that when an offender resides in a jurisdiction but indicates to the state that he/she intends to travel outside the United States, that the offender 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 intent to relocate to another country to live, work or attend school, or of his intent to travel to another country, the jurisdiction must 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.

The documentation submitted by the Poarch Band of Creek Indians does not contain any reference to the requirement for 21-day advance notice for international travel. The Poarch Band of Creek Indians has indicated an intention, however, to rectify this omission. The tribe's legal department is currently revising the code to reflect the 21-day notice for international travel and preparing it for review and approval by the Tribal Council.

The SMART Office has determined that this deviation does not substantially disserve the purposes of this requirement.

IX. Verification/Appearance Requirements

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

X. Public Registry Website Requirements

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

XI. Community Notification

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

XII. When a Sex Offender Fails to Appear for Registration

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

XIII. When a Jurisdiction has Information that a Sex Offender may have Absconded

The Poarch Band of Creek Indians meets all of the SORNA requirements in this section.

XIV. Other Considerations

The SMART Office has not identified any additional considerations associated with The Poarch Band of Creek Indians' implementation of SORNA's requirements

Conclusion

The Poarch Band of Creek Indians has put forth exceptional work and effort in adopting 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 the Poarch Band of Creek Indians to fully implement SORNA.

We encourage you to continue your efforts towards fully implementing the provisions of SORNA. If at any time you require assistance or clarification on implementation, do not hesitate to contact the SMART Office.