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SORNA Substantial Implementation Review Modoc Tribe of Oklahoma

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 Modoc Tribe of Oklahoma (Modoc Tribe) 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 Modoc Tribe of Oklahoma's SORNA substantial implementation packet and has found that the Modoc Tribe of Oklahoma has substantially implemented SORNA.

The Modoc Tribe of Oklahoma submitted a substantial implementation package on February 25, 2013. The substantial implementation package included a tribal code, a thorough policies and procedures manual, a Memorandum of Understanding (MOU) with the Miami Tribe of Oklahoma, as well as copies of registration and notice forms. In addition, email and phone correspondence with tribal representatives filled in gaps in laws and procedure. The Modoc Tribe of Oklahoma has opted to enter into an MOU with the Miami Tribe of Oklahoma to provide all registration and public notification. Therefore, all registration will occur in the same manner as would occur if the offender was within the Miami Tribe of Oklahoma jurisdiction.

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 Modoc Tribe of Oklahoma 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.

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.

Like other tribes in Oklahoma, the Modoc Tribe of Oklahoma and the Miami Tribe of Oklahoma are unable to submit NCIC/NSOR data through the State of Oklahoma. The Miami Tribe of Oklahoma has communicated with both Oklahoma State Bureau of Investigation (OSBI) and the Department of Corrections about possible solutions. Despite the tribes' efforts to submit data to NCIC/NSOR, the State of Oklahoma does not have a way for tribes to submit data into NCIC through its system. This is not consistent with SORNA requirements. Additionally,

FBI/CJIS does not have a way for tribes to submit this necessary data to NCIC/NSOR. This obstacle prevents the Miami Tribe of Oklahoma, and therefore the Modoc Tribe of Oklahoma, from entering information into NCIC/NSOR when initially registering a sex offender, when a sex offender indicates a change of residence, when a sex offender updates any information, when a sex offender is going to travel internationally, and/or if an offender absconds. The Miami Tribe of Oklahoma does update its own website with information regarding offenders living, working and going to school within the Modoc Tribe of Oklahoma's jurisdiction. It also provides community notification when an offender's information changes. The Miami Tribe of Oklahoma and the Modoc Tribe of Oklahoma have indicated that when they can do so, the tribes will enter all new, updated and recaptured sex offender information into NCIC/NSOR, as required by SORNA.

The SMART Office is aware of this obstacle, and is involved in efforts to find short- and long-term solutions for tribes in Oklahoma to input sex offender information into NCIC/NSOR. While these efforts are underway, the Miami Tribe of Oklahoma Police Department will complete a "Criminal History Request Form/NCIC Entry Form." Two copies are made, one for the offender's file, the other is sent to OSBI. As detailed in communications included in the substantial implementation package, OSBI will accept the forms but will not submit the information into NCIC.

Due to structural obstacles, the Modoc Tribe of Oklahoma cannot meet the SORNA requirements in this section. However, the SMART Office finds that the tribe has currently sufficiently addressed the requirements of this section because no workable solution exists that would permit the Miami Tribe of Oklahoma or the Modoc Tribe of Oklahoma to submit data to NCIC/NSOR at this time and because the tribes have indicated that they will submit this data to NCIC/NSOR when a future solution is developed.

Jurisdictions that have substantially implemented SORNA have a continuing obligation to maintain their system's consistency with SORNA standards. The Miami Tribe of Oklahoma and the Modoc Tribe of Oklahoma will be required to demonstrate that its registration systems, policies, procedures and necessary laws or codes are updated to reflect submissions to NCIC/NSOR when a solution is available or as directed by the SMART Office to ensure continuing implementation of SORNA.

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.

The Modoc Tribe of Oklahoma 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 Modoc Tribe of Oklahoma 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.

The Modoc Tribe of Oklahoma meets all 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.

The Modoc Tribe of Oklahoma meets all of the SORNA requirements in this section.

VI. Initial Registration: Timing and Notice

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

The Modoc Tribe of Oklahoma 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 reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

The Modoc Tribe of Oklahoma meets all 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.

The Modoc Tribe of Oklahoma meets 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. 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.

SORNA also 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.

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

A. Duration of Registration: As reflected in the Modoc Tribe of Oklahoma's Act and Policy and Procedures Manual, all sex offenders must register as follows: Tier I (15 years); Tier II (25 years); and a Tier III (for the rest of the sex offender's life).

B. Frequency of Registration: As reflected in the Tribe's Act and Policy and Procedures Manual, sex offenders are required, at minimum, to appear in person at the Tribal Police Department for purposes of verification and keeping their registration current from the time of release from custody for a sex offender who is incarcerated for the offense or from the date of sentencing for a sex offender who is not incarcerated for the offense, as follows: Tier I (every 12 months); Tier II (every six months); and Tier III (once every three months).

C. Reduction in Registration Period: As reflected in the Modoc Tribe of Oklahoma's Act and Policy and Procedures Manual, an offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier III registration and he or she has maintained a clean record for 25 consecutive years.

D. Clean Record Requirement: As reflected in the Modoc Tribe of Oklahoma's Act and Policy and Procedures Manual, a person has a clean record if he or she has satisfied the following requirements: 1) he or she has not been convicted of any offense, for which imprisonment for more than one year may be imposed; 2) he or she has not been convicted of any sex offense; 3) he or she has successfully completed, without revocation, any period of supervised release, probation, or parole; and 4) he or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

The Modoc Tribe of Oklahoma meets all of 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.

The Modoc Tribe of Oklahoma meets all of the SORNA requirements in 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.

The Modoc Tribe of Oklahoma meets all of the SORNA requirements in this section.

XII. 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.

The Modoc Tribe of Oklahoma meets all of the SORNA requirements in this section.

XIII. 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.

The Modoc Tribe of Oklahoma meets all of the SORNA requirements in this section.

XIV. Other Considerations

As previously mentioned, the Modoc Tribe of Oklahoma and the Miami Tribe of Oklahoma are in the same position as some other tribes in Oklahoma who are unable to submit NCIC/NSOR data through the State of Oklahoma. The Miami Tribe of Oklahoma Police Department will complete a “Criminal History Request Form/NCIC Entry Form.” Two copies are made, one for the offender’s file, the other is sent to the Oklahoma State Bureau of Investigation (OSBI). As detailed in communications included in the substantial implementation package, OSBI will accept the forms but will not submit the information from the form into NCIC. The Miami Tribe of Oklahoma has communicated with both OSBI and the Bureau of Prisons about possible solutions. If and when a solution is identified, the Miami Tribe of Oklahoma will utilize that option to submit the Modoc Tribe of Oklahoma’s information through the State.

Conclusion

The Modoc Tribe of Oklahoma has put forth exceptional work and effort in working with the Miami Tribe of Oklahoma to substantially implement SORNA and enhancing its sex offender registration and notification system.