

SMART OFFICE REPORT TO TRIBAL REPRESENTATIVES

Response to Comments Received During Summer 2011 SORNA Consultation

**delivered by
Linda M. Baldwin
Director, SMART Office**

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Spokane, WA**

Good Morning. I am so pleased to be here in Spokane to report back to you on the SMART Office responses to issues raised during the consultation regarding the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Act, which took place this summer.

By way of brief background, The Adam Walsh Child Protection and Safety Act was passed in 2006. The Act sought to close the gaps that existed in this nation's existing sex offender registration and notification systems by: (1) standardizing the way that registration and notification of registered sex offenders takes place in this country and (2) improving the sharing of information about registered sex offenders among jurisdictions. The Act also granted, for the very first time, the authority to certain federally-recognized tribes to implement their own sex offender registration and notification systems in conformance with SORNA, equivalent in every way to the registration and notification systems that SORNA would require the states and territories to maintain.

The SMART Office, housed within the Office of Justice Programs at the Department of Justice, was created by the Act to assist the jurisdictions with their implementation of the requirements of SORNA. We do so by providing various forms of technical assistance and by disbursing funds to SORNA jurisdictions through the Adam Walsh Act Implementation Grant program.

I would like to recognize that some tribal nations issues with SORNA relate to issues that are fundamental to the Act itself. Those issues (deadlines; involuntary delegation to the states; only certain federally recognized tribes were granted authority to implement SORNA; juvenile registration), unfortunately, can only be addressed through changes to the Act itself by the US Congress. That being said, many other issues were raised during the consultation that we could address within the Department of Justice/SMART Office. Balancing the need for brevity with my desire to do these issues justice, I will summarize the main concerns or comments, as well as our responses thereto.

Also, before getting started with my report, I want to underscore that consultation, whether formal or informal, is an ongoing activity for the SMART Office. Although the formal consultation over the summer was precipitated by the development and

publication of the SORNA Proposed Supplemental Guidelines, I hope that those of you who have had contact with our office directly know that frequent and ongoing contact with you or your representatives is something that we believe is essential to our work. Indeed, it is essential to our work with all of the SORNA jurisdictions – whether tribal, state or territory. So, I would like to take this opportunity to underscore that we fully intend for there to be additional consultations, both formal and informal, as the Justice Department, in particular the SMART Office, develops policies and procedures to enable SORNA -- as clarified by the Guidelines and Supplemental Guidelines -- to be put into action.

Turning to the substance of my report, the issues raised and the Department/SMART Office's responses were as follows:

Concerns regarding the deadline for implementation (July 27, 2011) and the implications for the tribes (loss of sovereignty) if they fail to meet the deadline:

- Inquiry and concern as to why there was not an automatic extension this year:

We heard your concerns but saw the extension request process as an essential step toward implementation by the tribes. In order to receive the extension, they were required to send us a two page form that included a primary point of contact for our future communications with the tribe regarding SORNA implementation, as well as to indicate the nature of their current and planned future activities regarding SORNA implementation. We are extremely pleased to be able to say that 188 out of 190 tribes that still plan to implement SORNA have submitted requests for extension as of September 30, 2010. We are continuing outreach efforts to the two remaining tribes. In addition, 5 tribes sent in resolutions stating that they no longer wished to implement SORNA and would prefer to have the State in which they are located take on that responsibility.

- There were suggestions regarding how DOJ/the SMART Office should use all means to reach out to tribes, including regional organizations, NCAI, and multiple methods.

The SMART Office did take this advice regarding outreach methods: During the extension request process this summer, the SMART Office used regional and national tribal organizations, utilized email, snail mail, certified mail and faxes and made many telephone f calls to tribes that had not sent in extensions, including personal calls from myself to the tribal leaders. The result was the success previously mentioned, 188 out of 190 tribes submitted extension requests.

- Concern regarding the process for determining that a Tribe has not sufficiently implemented SORNA, thereby setting in motion an involuntary delegation of that tribe's SORNA responsibilities to the state in which the tribe is located.

42 USC § 16927 (a)(C)(2) granted to the Attorney General the authority and obligation to determine if a tribe will substantially implement SORNA within a reasonable amount of

time. That determination must happen prior to an involuntary delegation. We are in the beginning stages of developing a process for how the Department will make those determinations, when they arise. We were hoping that the extension request process would be 100% successful, and that we would not have to implement this process until the coming year. However, as we have still not yet received a request from two tribes, it may be that we will have to implement a procedure this year.

It is our intention to consult with the tribes on this process, and to begin that consultation early on, as we are discussing alternative procedures. The Extension Request process this summer taught us a great deal about how to have successful and meaningful communications with individual tribes, and we intend to incorporate the methods used over the summer into whatever is developed with regard to an involuntary delegation procedure, which we are required to do by statute. I have been advised by Gena Tyner-Dawson to use this consultation as a scoping session, to encourage your comments regarding what that procedure should look like. I encourage you to reach out to me today to share your thoughts about what a procedure that is fair to the tribes, while still following the intent of the Act, would look like.

- Concern that an involuntary delegation could take place to a non-implementing state.

There has been no final determination made yet on the issue of whether an involuntary delegation will be made to a non-implementing state

Resource barriers and what SMART might do to address them:

- Concern that some tribes do not have the infrastructure or staff to quickly implement, and a suggestion that the SMART Office utilize organized groups or agencies that can help tribes to substantially implement.

The SMART Office heard your concerns and has developed additional methods of providing outreach and technical assistance to the tribal SORNA jurisdictions. We are piloting a new technical assistance program specifically to assist tribes with necessary pre-grant work that will enable them to successfully access grant funds to implement SORNA. There will be a pre-conference workshop as part of this effort in December in Palm Springs the day before the Tribal Nations Conference. Our TA provider, Fox Valley Technical College, will be reaching out to tribes that have not yet received AWA Implementation Grant funding to invite them to take advantage of this new TA opportunity.

In addition, we are also making available 2 scholarships per tribe to attend our SORNA Workshop on January 11, 2011. Finally, there is a TTSORS training being held October 28, 2010 in Scottsdale, AZ.

- Concern that tribes will have to work these problems out one by one.

The SORNA Proposed Supplemental Guidelines emphasized information sharing through the SORNA Exchange Portal. Tribes using TTSORS have an instant connection to the SORNA Exchange Portal.

Involvement of Congressional representatives in discussions on SORNA issues:

- A suggestion was made that the comments given during the consultation be shared with Congress and the Committee on Indian Affairs. It was also suggested that the Tribes directly contact their representatives.

The SMART Office met with Congressional representatives on SORNA, including the staff of the Senate Committee on Indian Affairs, and raised tribes' concerns. The SMART Office will continue to meet with Congressional representatives. We hope that tribes have reached out to their Congressional representatives as well.

Involvement of the Bureau of Indian Affairs in SORNA implementation:

- Comments were made stressing that the Bureau of Indian Affairs is a key player and must be more involved in SORNA implementation efforts.

SMART Office has recognized that BIA involvement in SORNA implementation is essential and has continued to reach out to BIA. The SMART Office has proposed that BIA issue a written directive to its officers and contract officers directing them to participate in SORNA implementation planning, implementation and enforcement activities and has offered to train those officers regarding SORNA and their role in SORNA implementation.

Specific comments regarding the Proposed Supplemental Guidelines:

- There were questions regarding how the Supplemental Guidelines will affect the Model Tribal Code, noting new requirements or options regarding the 21 day notice prior to international travel, public posting of information regarding juveniles sex offenders, and retroactive registration.

SMART Office will issue a revised Model Code once the Supplemental Guidelines are final.

- There was a specific question regarding how tribes would implement SORNA's requirement to retroactively register certain sex offenders.

This question was specifically addressed in proposed comments to the Supplemental Guidelines, which are being circulated within the Department and shortly through OMB prior to publication. Based on conversations and materials submitted by the tribes to the

SMART Office, this may not be an issue for most tribes as most are planning to register ALL previously convicted sex offenders.

Other Comments:

- Concerns regarding cross jurisdictional enforcement of SORNA violations.

The SMART Office has addressed this issue in a revised SORNA implementation document.

- A question was asked whether there had been consideration by DOJ and the federal government to provide public defenders for defendants facing prosecution on offenses that should be registered pursuant to SORNA.

The Tribal Law and Order Act, Section 304, deals with a number of issues, including this one. Please refer to the TLOA, which was signed by President Obama July 29, 2010.