



Procedure for Delegation of Tribal Sex Offender Registration and Notification Responsibilities

The Adam Walsh Child Protection and Safety Act was signed into law on July 27, 2006. Title I of this Act, the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. § 20901 et. seq., included the option for certain federally recognized Indian Tribes to function as sex offender registration and notification jurisdictions. This federal law requires that the tribes that “opted in” to participate in SORNA must implement the minimum standards required by SORNA for sex offender registration and notification. Pursuant to SORNA, if the U.S. Attorney General determined that a tribe which “opted in” had not substantially implemented the requirements of SORNA by the implementation deadline of July 27, 2011, and is not likely to become capable of doing so within a reasonable amount of time, the tribe’s sex offender registration and notification responsibilities must be delegated by the U.S. Department of Justice (DOJ) to the state(s) in which the territory of the tribe is located. 34 U.S.C. § 20929 (a)(2)(C). Based on current legal standards, the delegation is irrevocable.

Prior to July 27, 2011, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) issued a guidance document for tribes on how to request additional time to implement SORNA if they faced obstacles or delays in implementing by the July 27, 2011 deadline. The SMART Office engaged in significant outreach to tribes by certified letter, standard mail, email, fax, and telephone calls. Additionally, outreach was conducted by the National Congress of American Indians and the Bureau of Indian Affairs at SMART’s request in order to expand communications with tribes concerning the deadline and the statutorily-mandated delegation outcome for failing to implement or request additional time to implement.

Since the July 27, 2011 deadline, tribes that have requested and been granted an additional reasonable amount of time to implement have been provided with training, technical assistance, and updated guidance on how to work towards implementation, as well as how to request an additional reasonable amount of time to implement, if applicable.

If the SMART Office determines that a tribe is unable or unwilling to implement SORNA within a reasonable amount of time, the tribe is at risk of having its registration and notification duties delegated to the state(s) in which the territory of the tribe is located. Based on three consultation sessions with tribal leaders and other interested parties, the SMART Office adopted the following delegation procedure, consistent with Executive Order 13175.

A tribe is subject to delegation in the following circumstances: A) Tribe failed to either submit a SORNA substantial implementation package, request additional time to implement, or “opt out” of SORNA responsibilities by the July 27, 2011 statutory deadline for implementation, B) Tribe requests and is granted additional time to implement but stops communicating with the SMART Office and/or fails to provide monthly update progress reports, C) Tribe fails to submit a substantial implementation package or other required documentation by the extended deadline due date, D) Tribe requests additional time to implement but the SMART Office determines that the tribe is not capable of substantial implementation within a reasonable amount of time, E) After review of a tribe’s substantial implementation package, the SMART Office determines that the Tribe has failed to substantially implement the minimum standards of SORNA, and/or F) Tribe fails to continue to operate a functioning sex offender registration

and notification program. In these cases, the tribe will receive additional outreach prior to delegation according to the following procedure:

1. The SMART Office Director will contact the current tribal leader of record to provide the tribe one last opportunity to decide how the tribe wishes to proceed, before the Department begins taking steps toward delegation of the tribe's sex offender registration and notification responsibilities to the state(s) in which the territory of the tribe is located. This contact will be made by telephone. (This call will be in addition to any calls from the SMART Office prior to any relevant deadlines). The SMART Office will document this phone outreach and its results. The SMART Office Director will make every effort to ensure that the tribal leader is informed of alternative options for implementing SORNA, including entering into agreements with other jurisdictions. If the tribal leader does not have the guidance document on how a tribe may request additional time, it will be provided. If the tribal leader has a request for an additional amount of time completed but not yet submitted, the SMART Office will accept a late submission in order to assess what, if any, additional technical assistance may be needed and determine if additional time should be granted.
2. A list of tribes that have not submitted any documentation and have not responded to SMART Office outreach will be provided to the Office of Tribal Justice or the Executive Office of the United States Attorney for distribution to the designated tribal liaisons in each of the relevant US Attorney's Offices nationwide. Regional tribal organizations may also be contacted during this outreach period. Other federal partners may also be enlisted to assist in this outreach depending on the situation.
3. As part of this process, Tribal leaders will have the opportunity to request to meet with a DOJ official to discuss SORNA implementation options for the tribe and to discuss and address any obstacles facing the tribe in its attempt to substantially implement SORNA. Further, if appropriate, DOJ will contact the necessary state representatives to engage in conversations with all of the relevant parties.
4. In the event that all efforts to assist the tribe to either work towards substantial implementation or "opt out" have failed, the responsibility for sex offender registration and notification will be delegated to the state(s) in which the territory of the tribe is located. The delegation will take place upon issuance of a letter addressed to the tribal leader from the SMART Office, via certified mail, that indicates that the tribe's responsibility for sex offender registration and notification has been delegated to the state(s). A second letter will be sent to the governor of the state(s) in which the territory of the tribe is located, indicating that this delegation has taken place and informing the governor of the state's new obligation to register, and notify the public of, sex offenders who reside, attend school, or are employed on the tribe's lands.