

## Sex Offender Registration Violations

Sex offender registration and notification are critical means for law enforcement and the public to protect children from crimes of sexual abuse and exploitation.<sup>2</sup> The registration and notification systems protect children by facilitating the detection and apprehension of offenders who have sexually abused or exploited children if they reoffend, and by reducing their opportunities to reoffend.

Law enforcement agencies, using the information the registration systems collect about the identities, locations, and criminal histories of released sex offenders in their communities, are better equipped to solve crimes of sexual abuse and exploitation against children and promptly apprehend the perpetrators.

The disclosure of this information through community notification programs enables members of the public to take measures to protect themselves and their families from child abuse, child abduction, online exploitation, and other serious and violent crimes against our most vulnerable populations. For example, armed with this knowledge, parents may decline a convicted sex offender's offer to babysit their children or lead a youth group, and members of the community may report suspicious approaches to children by such offenders to the authorities.<sup>3</sup> With the growth of the internet and internet-connected devices, the importance of public availability of comprehensive and accurate sex offender information has increased correspondingly.<sup>4</sup> Many convicted sex offenders now find their victims through employment and online through social media sites. The potential victims may be, for example, children of working or single parents, who need childcare, and possible second caregiver support. Many of the victims are young children and teenagers who have unsupervised access to social media. Sex offenders prey on these vulnerabilities online, aiming to move into the lives of the victims. The community notification programs and associated public sex offender websites provide a means for those targeted – whether approached online or in person – to check whether persons with whom they are currently or potentially involved in social relationships are sex offenders, and to inform law enforcement when it appears that such offenders are engaged in or planning further criminal activities against children.

### Recidivism in Sexual Offenses

How likely are sexual offenders to offend again? According to the Bureau of Justice Statistics, released sex offenders were more than three times more likely than other released prisoners to be arrested for rape or sexual assault.<sup>1</sup> Given many sexual offenses, particularly those against children, go unreported and undetected, this is likely just the tip of the iceberg in terms of repeat sexual offending.

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<sup>1</sup> *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)*. Mariel Alper and Matthew R. Durose (2019), Bureau of Justice Statistics. (NCJ 251773).

<sup>2</sup> Sex offender registration also covers offenders who commit sexual offenses against adults, not just children.

<sup>3</sup> See 73 FR 38044-45.

<sup>4</sup> In 2021, the National Center for Missing & Exploited Children's CyberTipline received 29,397,681 reports about online child sexual exploitation, broken down as follows: Child Pornography (possession, manufacture, and distribution) – 29,309,106; Online Enticement of Children for Sexual Acts – 44,155; Child Sex Trafficking – 16,032; Child Sexual Molestation – 12,458; Misleading Words or Digital Images on the Internet – 5,825; Unsolicited Obscene Material Sent to a Child – 5,177; Misleading Domain Name – 3,304; Child Sex Tourism – 1,624. See <https://www.missingkids.org/gethelpnow/cybertipline>.

## Voice in the Community

*From the Remarks of United States Marshals Service Deputy Director David L. Harlow on the 10-year Commemoration of the Adam Walsh Act, SMART Symposium, July 27, 2016:*

“Registration provides information which allows people to protect themselves, their children and their neighbors. It also provides a critical tool which helps law enforcement respond to sex crimes. Registration has been associated with, or led to, [a] widespread increase in public safety... For example:

- In February 2014, a former sheriff’s deputy in Colorado saw a man who appeared to be watching children from his car, which was parked outside an elementary school. The former deputy recognized the man from his image on the sex offender registry. The registrant, who had a previous conviction for sexually assaulting children, was interviewed by police. They determined that he was there looking for the “perfect” girl to lure into his car. He was arrested.
- Earlier this month, in Ohio, a law enforcement officer recognized a registered sex offender who was driving a car full of children in a parade. Investigation found he had been left in charge of those children for several days as their “adult mentor” was prepping for the parade. He was a child sex offender, on parole, with a no-contact order for children. He was arrested.

“Similar stories have emerged from across the nation... It is unlikely that these crimes would have been detected without the registry.

“We will rarely know the names of the near victims saved by registries, and this is precisely the point. The registry helps the public identify and respond to risk; it offers a way to intervene before plans toward sexual assault are carried through. In those cases, we do not have to learn a new name like Megan Kanka, Jacob Wetterling, or Adam Walsh. As the above list of arrests show, the registry has helped in the detection of crime. From a law enforcement perspective, and for much of the public, that makes registries extremely valuable.”

The registration and notification mechanisms would not be effective if a registered sex offender could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if the registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to another jurisdiction that required little or nothing in terms of registration and notification. Congress has accordingly created a cooperative federal–state system in which sex offender registration and notification are primarily carried out and enforced through the programs of the individual states and other non-federal jurisdictions (D.C., the U.S. territories, and Indian tribes), but with minimum national standards for these programs, and with federal assistance and enforcement elements that encourage, support, and leverage the programs.<sup>5</sup>

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<sup>5</sup> See 73 FR 38045.

The federal Sex Offender Registration and Notification Act (SORNA), and related guidelines issued by the Attorney General, establish the minimum national standards for sex offender registration and notification, with funding conditions and assistance that encourage implementation of these standards. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office directly assists and assesses the registration jurisdictions’ implementation of SORNA. It also provides a variety of technical and technological tools that facilitate the jurisdictions’ implementation efforts and enable them to share sex offender information. The Dru Sjodin<sup>6</sup> National Sex Offender Public Website ([www.NSOPW.gov](http://www.NSOPW.gov)), administered by the SMART Office, provides access through a single national site to the information on the registration jurisdictions’ public sex offender websites. The National Sex Offender Registry (NSOR), administered by the FBI, compiles information about sex offenders from the registration jurisdictions and makes it available to law enforcement on a nationwide basis. The U.S. Marshals Service investigates, locates, and apprehends sex offenders who have failed to comply with registration requirements throughout the country. Under a federal criminal provision, 18 U.S.C. § 2250, sex offenders who violate SORNA’s registration requirements can be federally prosecuted, if circumstances supporting federal jurisdiction exist.

Building on these efforts, Congress and the federal government can and should do more to meet the threats against children that the sex offender registration and notification system is designed to address.

## **Variation in SORNA Implementation among Jurisdictions**

### *Registration*

Since its enactment in 2006, SORNA has influenced the registration requirements adopted in jurisdictions across the United States, with most of these jurisdictions meeting many of the minimum national standards. Despite the overall progress in enacting SORNA’s standards, variations remain in the implementation of SORNA across the country. As of July 2021, 158 jurisdictions (18 states, 4 territories, and 136 federally recognized tribes) out of 213 potential SORNA registration jurisdictions had substantially implemented SORNA’s requirements.<sup>7</sup> Many of the states that have not yet substantially implemented SORNA’s requirements have adopted most of them.<sup>8</sup> States and territories that do not meet SORNA’s substantial implementation requirements are subject to an annual mandatory reduction in federal justice assistance funding. However, these jurisdictions may apply to have those withheld funds reallocated to use for the sole purpose of furthering SORNA implementation. Jurisdictions have used the reallocated funds

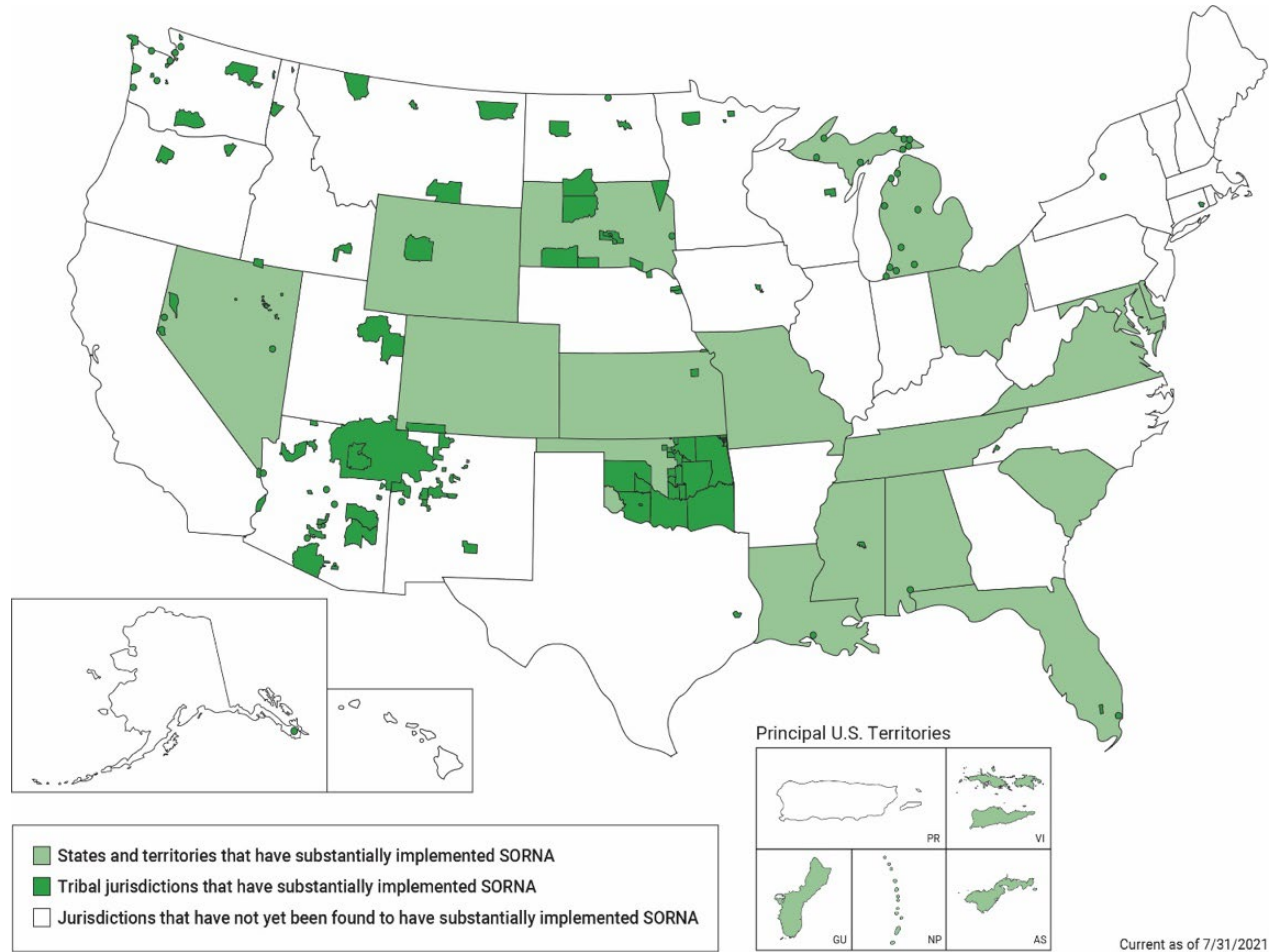
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<sup>6</sup> First established in 2005 as the National Sex Offender Public Registry (NSOPR), NSOPW was renamed by the Adam Walsh Child Protection and Safety Act of 2006 in honor of 22-year-old college student Dru Sjodin of Grand Forks, North Dakota, a young woman who was kidnapped and murdered by a sex offender who was registered in Minnesota. For more information, visit <https://www.nsopw.gov/en/About>.

<sup>7</sup> See Figure 1.

<sup>8</sup> See National Institute of Justice, *Tracking Individuals Who Commit Sex Offenses: Federal Law, Resources Have Led to Marked Improvement of State Registries, But More Work is Needed* (November 13, 2020) (“At least half the states met implementation thresholds for 13 of the 14 SORNA standard areas; 75% of the states met the thresholds for at least nine areas; and 92% of the states met them for at least half of the SORNA areas.”).

to improve registry software, purchase hardware and other registration-related equipment, and support registry personnel.



*States, Tribes, and Territories that Have Substantially Implemented SORNA*

*Forum shopping refers to the practice of choosing the court or jurisdiction that has the most favorable rules or laws for the position being advocated.*

Nonetheless, about half of the states do *not* meet the SORNA standards for offender in-person appearances and verification. These standards include offense-based tiering that affects the required frequency for updating registration information and the duration of registration. Hence, the information in some states’ sex offender registries may not be sufficiently verified and kept up to date, and the public safety benefits of registration and notification may be lost after relatively short

registration periods. States that have not yet implemented SORNA’s requirements may instead use different risk assessment methods to determine an offender’s classification and related registration responsibilities, ranging from judicial projection of the likelihood to reoffend, to assessing risk by actuarial methods, to local sheriffs making discretionary ad hoc determinations. The lack of uniformity across jurisdictions in meeting SORNA’s standards for tiering and classifying offenders can deny law enforcement and the public information needed for the protection of children and can allow “forum shopping” by sex offenders to avoid more robust

registration requirements – or even registration altogether. Without nationwide implementation of SORNA, there will continue to be gaps and disparities that sex offenders can exploit, to the detriment of children’s safety.

### *Notification*

As with registration requirements, jurisdictions vary on the implementation of SORNA’s notification requirements. Consequently, there continues to be variation in the extent to which states inform the public about the presence of released sex offenders in their communities and many states have remaining work to bring their notification programs up to the national standards.

All 50 states, D.C., five U.S. territories, and 136 federally recognized tribes have public sex offender websites that make information about registered sex offenders available to the public. All public sex offender websites are linked to the National Sex Offender Public Website (NSOPW), a national site mandated by SORNA and maintained by the SMART Office. NSOPW is an unprecedented public safety resource that provides the public with access to sex offender data nationwide. It is the only U.S. government website that links public state, territorial, and tribal sex offender websites in one national search site. Despite this remarkable achievement in providing public access, the efficacy of the NSOPW is dependent on the adequacy of the information included in the registration jurisdictions’ websites that feed into it.

### **Importance of Notification**

On July 29, 1994, in Hamilton Township, New Jersey, 7-year-old Megan Kanka entered the house of her neighbor, Jesse Timmendequas, a convicted sex offender, in the hope of seeing his puppy. Once she was inside, Timmendequas sexually penetrated her and killed her by strangulation and suffocation.

Timmendequas was living across the street from Megan and her family with two other sex offenders he had met while imprisoned. Timmendequas’s earlier crimes included attempted aggravated sexual assault of a 5-year-old girl in 1979 and attempted sexual contact in 1981 in which he choked a 7-year-old girl unconscious and left her for dead.

“We knew nothing about him,” said Megan’s mother, Maureen Kanka, regarding Timmendequas. “If we had been aware of his record, my daughter would be alive today.”

In the wake of the tragedy, the Kankas sought to have local communities warned about sex offenders in their areas. In 1996, Congress enacted Megan’s Law (Pub. L. 104-145) to encourage States to protect children by informing the public about sex offenders in the community.

Sex offender notification laws have evolved both at the state and federal levels since that time, including through the enactment of the Sex Offender Registration and Notification Act (SORNA), which was Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248). SORNA was enacted to close potential gaps and loopholes that existed under

prior laws, and to strengthen the nationwide network of sex offender registration programs. In 2016, Congress enacted International Megan’s Law (Pub. L. 114-119), also named for Megan Kanka, whose purposes included addressing known child-sex offenders who travel internationally.

Discrepancies remain among the states not only in the amount and type of registration information that is publicly displayed for each offender but also in whether a sex offender is publicly posted at all. For example, as of July 2021, 23 states fell short of meeting the minimum national standards for community notification, including publicly posting all offenders and registration information required under SORNA. In states that fall short of the SORNA standards, as few as 2% or 3% of registered sex offenders may be posted.<sup>9</sup> An acute concern is that many agencies that work with children or other vulnerable populations rely on the public sex offender websites as part of their background check screening. NSOPW is often utilized as a user-friendly and centralized method to search all public sex offender websites. But the information can only be as useful as it is thorough. Running an NSOPW search for a person who resides in a state that does not publicly post 97 to 98% of all registered sex offenders is, at best, of limited value.

Ultimately, these critical problems must be resolved by all jurisdictions implementing the requirements of SORNA. Some states have cited a lack of funding as contributing to their inability to meet the national standards, whereas other states point to legislative roadblocks or a lack of political will by state and local politicians. As with SORNA’s registration requirements, without nationwide implementation of SORNA’s community notification standards, there will continue to be gaps and disparities that sex offenders can exploit.

### **SORNA Enforcement**

If a sex offender wishes to commit more crimes against children, unimpeded by the safeguards of registration and notification, relocating to another state and failing to register there can be an attractive means to that end. Location and apprehension of these absconding offenders by the U.S. Marshals Service, and federal prosecution under 18 U.S.C. § 2250 in appropriate cases, can foil their efforts to evade registration and reoffend.

While many registration violation cases are successfully prosecuted under 18 U.S.C. § 2250, the extent of prosecution varies among districts and certain features of existing law create obstacles for the effective use of 18 U.S.C. §2250. Litigation challenges include:

<b>5 Key SORNA Litigation Challenges</b>	
1	<b>Difficulties in classifying and prosecuting sex offenders.</b> There are offenders who have committed serious sex offenses against children and violated state registration laws. It is difficult, however, to classify their crimes and prosecute them federally because of differences in the definition of state sex offenses.

<sup>9</sup> <https://sexoffenders.oregon.gov/Faq> (reporting as of July 1, 2021, that only 1,062 sex offenders out of 31,651 are publicly posted).

2	<b>Sex offenders' claims that they are not liable for SORNA violations.</b> Some offenders assert they are not liable for SORNA violations if they committed their sex offenses before SORNA's enactment, or if they committed their registration violations in jurisdictions that have not fully implemented SORNA.
3	<b>Issues prosecuting SORNA violations short of a complete failure to register.</b> There have been difficulties in prosecuting sex offenders who fail to appear periodically to verify their registration information as SORNA requires, or sex offenders not reporting lodging at places away from their residences, where they may travel to sexually abuse children with a lesser likelihood of detection.
4	<b>Claims by sex offenders that SORNA is unconstitutional.</b> Many sex offenders have alleged that SORNA is unconstitutional because it unfairly holds them liable for violating registration requirements of which they are unaware or registration requirements they assert are impossible for them to comply with.
5	<b>Venue considerations.</b> It may be necessary that a prosecution under 18 U.S.C. § 2250 be brought in the state to which a sex offender absconds, as opposed to the state of origin which reported the offender's disappearance to the U.S. Marshals Service. <sup>10</sup>

As discussed below, there are potential legislative reforms and regulatory reforms that would resolve or help with all of these problems.

### International Issues

Offenders who have sexually abused or exploited children, and who wish to do more of the same, in many cases travel or relocate to foreign countries where law enforcement is (or is perceived to be) weaker, where child victims may be more readily available, where children are more vulnerable, and where they are free of the registration and notification safeguards to which they are subject in the United States.<sup>11</sup>

Congress has begun to address this global threat to children by enacting International Megan's Law (IML) in 2016 (Pub. L. 114-119), although gaps remain. The IML reforms include:

- amending SORNA and 18 U.S.C. § 2250 to require sex offenders to report intended international travel with federal criminal prosecution authorized for violations;
- providing statutory authorizations and procedures for U.S. authorities to notify foreign states regarding sex offenders' travel to their territories; and
- requiring that U.S. passports issued to U.S. citizens that are registered sex offenders against children bear markings that identify them as such, after the Angel Watch Center (AWC) has confirmed to the Department of State that the individual is covered by IML.<sup>12</sup>

<sup>10</sup> However, the jurisdiction of the initial conviction often has the most information about the offender, providing more interest in prosecuting the offender as well as often making it easier for USMS to gather the information needed to prosecute an 18 U.S.C. § 2250 offense. Circuit courts have divided as to whether prosecution can be legally brought in an offender's departure district.

<sup>11</sup> See 86 FR 69856.

<sup>12</sup> For purposes of the IML passport marking requirement, the current definition of a covered sex offender is an individual who: (A) is a sex offender, as defined in 34 U.S.C. §§ 21502(3), 21503(f); and (B) is currently required to register under the sex offender registration program of any jurisdiction. See 22 U.S.C. § 212b.

The efficacy of these reforms, however, depends on their effective implementation and, in some contexts, on the adoption of supplementary legislative or regulatory measures. Nothing in IML prevents the Department of State from including questions about sex offender registration status in passport application forms, but IML does not *require* that such information be sought, which drastically reduces the effectiveness of the law. In the first three years of IML implementation, only 85 passport applicants self-reported this information on passport applications, while independent checks by AWC identified several thousand more offenders covered by IML who never disclosed their sex offender status.<sup>13</sup> By 2020, only one percent of the estimated number of covered offenders had been identified.

### Angel Watch Center

Operation Angel Watch was created to identify and target individuals who have been convicted of sexual crimes against children, and who are traveling in foreign commerce, in a proactive effort to reduce the risk of U.S. persons engaging in extraterritorial child sexual abuse. AWC helps enable foreign countries to make fully informed decisions relating to admissibility, border inspections, surveillance or investigative measures, or any other action deemed appropriate, as well as increasing information sharing and encouraging foreign countries to provide the U.S. with notifications when foreign nationals convicted of sexual crimes against children in their countries are traveling to the U.S.

In addition to incorporating a question about sex offender registration in passport applications, increased automation and connectedness across systems would help to ensure accuracy and completeness of passport marking as envisioned in IML. Implementation of the IML passport marking protections hinges on confirmation by AWC that an individual is a “covered offender” – but since the implementation of IML in 2017, numerous offenders who travel internationally and should be subject to passport marking have not been referred to AWC for review. Integration of sex offender registration information into automated checks of passport applications would help to identify potentially covered offenders, flag them for review by AWC, and confirm the accuracy of responses to the passport application question if it were added.

The effectiveness of the requirement that sex offenders report international travel depends largely on states and other registration jurisdictions incorporating this requirement into their registration programs. While most states have adopted such a requirement or inform

sex offenders of the federal law requirement to report international travel, some states have not yet done so. All jurisdictions should implement this critical SORNA requirement in their sex offender registration programs and ensure that their registration forms consistently give sex offenders notice of the international travel reporting requirement. Criminal liability under 18 U.S.C. § 2250(b) depends on a sex offender knowingly failing to provide international travel information as required by SORNA.

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<sup>13</sup> The AWC keeps a list of all covered sex offenders that have been vetted and found to be required to have the IML endorsement, as well as by what means they were identified. From when the State Department began marking passports in fiscal year 2018 through fiscal year 2020, AWC operations identified 4,609 applications that should have been covered by IML.



Congress did not fully specify the international travel reporting requirement by statute, but rather authorized the Attorney General to flesh out matters of procedure and detail – such as how far in advance sex offenders must report intended international travel, to give U.S. authorities adequate time to conduct any warranted investigation and to notify the responsible authorities in the destination country prior to the sex offender’s arrival. The absence of a complete set of specifications regarding how and when sex offenders are to comply with the international travel reporting requirements can create difficulties in offender compliance as well as in prosecuting sex offenders for violating these requirements. As discussed below, a recently adopted regulatory reform addresses this problem.

Since the IML passport marking requirement is limited to sex offenders required to register in a U.S. jurisdiction, it may be avoided by a sex offender retaining a U.S. passport but moving to a foreign country, which puts the offender outside the scope of the registration requirements of domestic U.S. jurisdictions. As discussed below, this problem can be addressed through an appropriate legislative amendment.

#### Case Story: *United States v. Pendleton*<sup>14</sup>

For decades, Thomas S. Pendleton traveled throughout the United States and to foreign countries and sexually abused children in the places he went. Pendleton was convicted in 1981 in Michigan for molesting an 11-year-old while serving as a church camp counselor at the victim’s church. He was convicted in 1992 for sexual abuse of a 12-year-old boy on biking trips in Virginia and New Jersey. He was convicted in the Republic of Latvia of sexually abusing a 9-year-old child and a 13-year-old child between June and November 2001. After serving his sentence for those crimes, he was deported to the United States on March 20, 2005.

Pendleton was then registered as a sex offender in Washington, D.C. On April 29, 2005, he informed D.C. that he was moving to Delaware and said that he had been in contact with the Delaware authority confirming his responsibilities there. He never registered as a sex offender in Delaware.

Pendleton traveled to Germany in November 2005 and sexually abused a 15-year-old boy, whom he had befriended, on a bike trip. After serving his prison sentence for that offense, he was deported to the United States and returned on January 21, 2008.

Pendleton traveled about the United States, not registering anywhere, and ultimately returned to Delaware. He was arrested by the U.S. Marshals Service in Wilmington, Delaware, on March 10, 2008, for failing to register as required by SORNA, in violation of 18 U.S.C. § 2250. Execution of a search warrant on an email account Pendleton used showed that in late January 2008 he had researched sex offender registration requirements to determine that he was not required to register under Delaware law at that time. At the time of his arrest, Pendleton had a one-way airplane ticket to travel on March 12, 2008, to Prague, Czech Republic.

<sup>14</sup> *United States v. Pendleton*, 636 F.3d 78 (3d Cir. 2011); *United States v. Pendleton*, 658 F.3d 299 (3d Cir. 2011); *Pendleton v. United States*, 2016 WL 402857 (D. Del. 2016); [www.justice.gov/opa/pr/serial-sex-offender-sentenced-30-years-prison-sex-tourism-and-failure-register-charges](http://www.justice.gov/opa/pr/serial-sex-offender-sentenced-30-years-prison-sex-tourism-and-failure-register-charges).

Pendleton was convicted of extraterritorial child sexual abuse under 18 U.S.C. § 2423 for the illicit sexual conduct in Germany, for which he was sentenced to 30 years of imprisonment, and for the failure to register offense under 18 U.S.C. § 2250, for which he was sentenced to a concurrent term of 10 years. He remains in the custody of the Federal Bureau of Prisons with a projected release date of October 1, 2033.

## Significant Developments

There have been several key developments relating to sex offender registration in recent years. Legislatively, the enactment of International Megan's Law in 2016 marked an important advance in the evolution of the global system for protecting children against sex offenders who travel internationally. There have also been several Supreme Court decisions in recent years affecting sex offender registration and notification. In *Nichols v. United States*, 578 U.S. 104 (2016), the Court held that a sex offender could not be held liable under 18 U.S.C. § 2250 for leaving the state in which he was registered (without informing the state) and relocating to the Philippines but noted that the international travel reporting reforms of International Megan's Law would address the problem going forward. In *Gundy v. United States*, 139 S. Ct. 2116 (2019), the Court rejected a constitutional challenge alleging that Congress could not validly empower the Attorney General to specify the scope of application of SORNA's requirements, including to sex offenders whose convictions predate SORNA's enactment.

The Department of Justice's SMART Office carries forward the work of SORNA implementation and strengthening sex offender management. Noteworthy developments include:

- **SMART Symposium** – The SMART Office hosts National Symposia on Sex Offender Management and Accountability, most recently on July 18-19, 2019, in Chicago. This two-day event brought together criminal justice professionals who investigate and prosecute sex offenses and register and monitor sex offenders, as well as those providing victim support services. Highlights of the 2019 symposium included a case study on a cold case solved with genetic genealogy, tactics to identify child sex trafficking, and a session on psychopathic sex offenders. The symposium provided almost 600 law enforcement officers, prosecutors, sex offender registry officials, victim advocates and criminal justice experts information on the latest tools and techniques vital to combating sexual assault and child sexual abuse. The symposium sessions focused on four topic areas: information for prosecutors; tools for registrars and jurisdictional registry officials; interdiction and tracking of sex offenders; and research on sex offender behavior and sex offender registration and notification laws.
- **Tribal Access Program** – The Justice Department's expansion of direct access to the FBI's NSOR in the Tribal Access Program (TAP) has been critical to enable tribes to meet SORNA standards. Direct access allows tribes participating in TAP and implementing SORNA to use their Tribe and Territory Sex Offender Registry System (TTSORS) to submit required sex offender data and gain access to NSOR, giving tribal law enforcement information necessary to investigate sex offenses and share sex offender information with other jurisdictions across the country. The TTSORS-NSOR

interconnection, developed by SMART, facilitates timely information sharing between tribal sex offender registries and other registries and law enforcement nationwide.

- **NSOPW** – In July 2019, SMART unveiled a refresh of the National Sex Offender Public Website (NSOPW) with expanded search capacity, improved navigation, created a mobile app, and updated safety and education information. NSOPW averages 5 million searches a month.

The landscape and discussion surrounding sex offender registration continue to evolve. In the 2020 “Information Sharing and the Role of Sex Offender Registration and Notification, Final Technical Report,” supported by the National Institute of Justice, three general developments in state implementation of SORNA were identified.<sup>15</sup> These are (i) a growing registrant population, broadened data elements and triggering events requiring updating and verification, and an increase in interjurisdictional transactions, (ii) transition to newer and more robust technological platforms, and (iii) advances in a “culture of information sharing,” both interjurisdictionally and within jurisdictions.

However, the American Law Institute, in September 2022, adopted a revision of the Model Penal Code, Article 213, concerning sexual assault and related offenses. The revision proposes detrimental changes in sex offender registration and public notification, such as:

- Prohibiting public notification regarding registered sex offenders. *See* §§ 213.11H(1)(a), .11I(3)(a). This would terminate the public sex offender websites, existing in all states, which parents rely on for the safety of their children – *see* the Megan Kanka case described above – and which child-serving organizations rely on in screening employees and volunteers.
- Restricting and penalizing the disclosure of information from the sex offender registries even to victims. For example, a law enforcement officer could be imprisoned for up to five years for telling the parent of a sexually abused child, or a rape victim of any age, that the offender has been released from prison and is living across the street from the victim. The victim could be informed that the offender is living in the same county – but she could be imprisoned for up to five years for sharing the information outside of her household. *See* § 213.11H(1)(a)(ii), (b)(ii), (2)(a).
- Severely curtailing law enforcement’s current uses of sex offender registration information to prevent, detect, and investigate sex offenses, including sexual abuse and exploitation of children. This is accomplished by prohibiting the sharing of registration information with other law enforcement agencies, except for information about a specific sex offender requested to aid in investigating a specific offense. *See* § 213.11H(1)(a)(i).
- Prohibiting registration authorities from accepting or recording key information from sex offenders, such as fingerprints, telephone numbers, and email addresses. *See* § 213.11D(1), (5). This would make administration of the sex offender registries and communication with the registrants difficult or impossible, and preclude the normal uses of sex offender registration information in preventing, detecting, and investigating online child sexual abuse and exploitation.

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<sup>15</sup> <https://www.ojp.gov/pdffiles1/nij/grants/254680.pdf> (pp. 64-66)

- Excluding many serious sex offenses, including sex offenses against children, from the offenses for which registration is authorized. *See* § 213.11A(1)(d). Sexual assault by extortion, by fraud, in the absence of consent, or of a legally restricted person (in custody or under supervision) would not be registrable offenses. *See* §§ 213.3(3), .4, .5, .6. Sexual assault of a minor and fondling a minor would not be registrable offenses unless the offender is at least 10 years older than the victim or the victim is under 12, and offensive sexual contact with a minor would not be a registrable offense. *See* § 213.8(1), (4), (6). Promoting, patronizing, and facilitating sex trafficking, including in cases involving child victims, would not be registrable offenses. *See* § 213.9(3)-(5).
- Capping the duration of registration at 15 years, regardless of the seriousness of the sex offense and the offender’s criminal history, and allowing registration to be terminated at any time. *See* §§ 213.11F, .11 J.
- Making it easy for sex offenders to evade registration requirements by moving to another jurisdiction. Registration authorities could not inform their counterparts in other jurisdictions, in which the sex offender is not already registered, about the offender’s relocation. *See* §§ 213.11D(6), .11H. The requirement to register would terminate if the destination jurisdiction defined the relevant sex offense more narrowly. *See* § 213.11A(2)(a), (c)-(d). For example, a sex offender convicted of sexually abusing a six-year-old under a statute prohibiting sexual acts with children below the age of 17 would not have to register after moving to a jurisdiction whose corresponding offense prohibits sexual acts with children below the age of 16.
- Thwarting the international tracking and notification system established by International Megan’s Law through new prohibitions of collecting and sharing information necessary for the system’s operation. For example, registration authorities would be barred from accepting or recording information from sex offenders about intended international travel. *See* § 213.11D(1), (5).

These changes are alarming and have been met with grave concern by organizations and individuals concerned with the safety of children and the security of the public against sexual abuse and exploitation. They pervasively conflict with the national standards for sex offender registration and notification enacted by Congress in SORNA. If adopted, they would undermine the national system of sex offender registration and notification under SORNA with heavy costs to public safety. The Department of Justice published final regulations in 2021, at 86 FR 69856, which fully articulate sex offenders’ registration requirements under SORNA. These regulations will facilitate compliance with and enforcement of all of SORNA’s requirements.

## **Strategic Response**

Short-Term Goals	Long-Term Goals
<p><b>Implement SORNA Regulations and Support Legislative Amendments:</b> The final SORNA rule, published at 86 FR 69856, should be fully utilized. Congress should enact legislative amendments to strengthen sex offender registration and notification, including authorizing federal prosecution of state law registration violations committed under circumstances supporting federal jurisdiction, and authorizing the extension of passport marking to U.S. sex offenders who live abroad.</p>	<p><b>Enhance SORNA and IML Enforcement:</b> The Department of Justice will implement and utilize the regulatory and legislative reforms to enforce sex offender registration requirements through prosecution under 18 U.S.C. § 2250. The Department of State and the Department of Homeland Security will implement passport marking for U.S. child sex offenders who live abroad.</p>
<p><b>Create an award program for SORNA champions:</b> As a further incentive for SORNA implementation, an annual award program should be authorized and funded to recognize jurisdictions, officials, organizations, and individuals across the country that have promoted public safety through sex offender registration and notification or made significant strides in SORNA implementation.</p>	<p><b>Secure implementation of as many SORNA elements as possible by as many jurisdictions as possible:</b> The Department of Justice and the SMART Office will promote and support effective sex offender registration, notification, and management through collaboration with other federal, state, tribal, territorial agencies and jurisdictions, and with non-profit and nongovernmental organizations. The SMART Office will continue to provide training, funding, and a myriad of resources to support SORNA implementation efforts. All jurisdictions that have not substantially implemented SORNA should work diligently toward that objective, and those that have substantially implemented should work to maintain their programs' consistency with SORNA.</p>
<p><b>Continue implementing the Tribal Access Program:</b> Many SORNA tribes still don't have access to the FBI's criminal justice information systems, limiting their ability to screen for offenders in their jurisdiction and inhibiting cross-jurisdictional information sharing about mobile offenders. Additional funding is needed to continue implementing TAP and ensure all SORNA tribes have access to the full suite of intelligence about sexual offenders in their area.</p>	<p><b>Assess strategies to further automate the registration process:</b> As technology advances, avenues should be explored to automate as much of the registration process as possible, especially for offenders that move from one jurisdiction to another, so that communities and law enforcement have access to the most up-to-date and accurate registration information possible.</p>

<p><b>Strengthen the implementation of International Megan’s Law to better track sex offenders’ international travel:</b> The Department of State will add a question to passport applications to help identify sex offenders who are subject to the passport marking requirement.</p>	<p><b>Use automation to improve compliance with International Megan’s Law:</b> The automated checking system for passport applications will be enhanced to help identify sex offenders who are subject to the passport marking requirement.</p>
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*Partnerships, Training, and Other Assistance*

Many federal agencies – including the U.S. Marshals Service, the FBI, the Bureau of Indian Affairs, Interpol Washington-U.S. National Central Bureau, the Department of Homeland Security, the Department of State, and the Department of Defense – must continue to collaborate with state, tribal, and local partners on issues relating to sex offender registration. Continuation of these partnerships is vital to the ongoing success of SORNA implementation at the state, tribal, and territorial levels. Likewise, the Department of Justice, including its SMART Office, must continue to collaborate, strengthen, and broaden relationships with non-profit and nongovernmental organizations, such as the National Center for Missing & Exploited Children, to extend their reach, bolster education and advocacy efforts, and address issues relevant to sex offender registration and notification. Grant-funding should be created to fund and encourage established, proven programs that educate the public on sex offender registration, including how to leverage the information available to them on public registries to protect their children. The SMART Office offers myriad resources and training on SORNA implementation issues and administers grant funding to support SORNA implementation efforts.<sup>16</sup>

*Legislative and Regulatory Reforms*

The SORNA regulations, published at 86 FR 69856, should be fully utilized. The rule resolves many issues that can hinder effective federal enforcement of sex offender registration requirements. Among other measures, the rule does the following: (1) it clarifies that SORNA’s registration requirements apply to *all* sex offenders – regardless of when they committed their sex offenses and regardless of where they committed their registration violations – and that 18 U.S.C. § 2250 prosecutions may be premised on any type of SORNA violation; (2) it explains that SORNA and 18 U.S.C. § 2250 do not hold sex offenders liable for violating registration requirements of which they are unaware or for failing to do the impossible; (3) it requires sex offenders to inform a jurisdiction that they are leaving the jurisdiction prior to departure, supporting venue to prosecute violations in the jurisdiction in which a sex offender was registered prior to absconding; and (4) it specifies the timing requirements for, and clarifies other aspects of, international travel reporting by sex offenders.

Congress should amend 18 U.S.C. § 2250 to provide liability if sex offenders violate the state registration requirements of the jurisdiction they are in, under circumstances supporting federal jurisdiction. Currently, proving that state sex offenders violated SORNA can require difficult judgments whether their state offense was within descriptive categories set forth in SORNA’s offense-coverage or “tiering” provisions, which affect the requirement to register or the duration

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<sup>16</sup> See [www.smart.ojp.gov](http://www.smart.ojp.gov).

of registration.<sup>17</sup> Consequently, prosecution under 18 U.S.C. § 2250 may be difficult or impossible because of marginal differences in the definition of state sex offenses, even if there is no question that the sex offender was convicted of a serious state sex offense against a child and later violated state registration laws. The problem would be substantially ameliorated by allowing prosecution of state law registration violations by sex offenders under 18 U.S.C. § 2250, where grounds for federal jurisdiction exist.

Additionally, legislative and administrative changes are needed to fully effectuate the reforms of International Megan’s Law (IML). All jurisdictions that have not yet done so should incorporate in their sex offender registration programs the IML international travel reporting requirements, and all jurisdictions should consistently notify their registrants of these reporting requirements. The SORNA regulations will facilitate federal enforcement of the international travel reporting requirements by fully articulating these requirements. To help identify sex offenders who are subject to the IML passport marking requirement, the Department of State should ask passport applicants about their sex offender registration status, and the automated pre-screening system for passport applicants should be enhanced with sex offender registration information to facilitate referral of potentially covered offenders to AWC. If a sex offender misrepresents his sex offender registration requirement on the passport application, he can be charged with making a false statement under 18 U.S.C. § 1001. As discussed above, since the IML passport marking requirement for sex offenders against children is currently limited to sex offenders required to register in a U.S. jurisdiction, the marking requirement can be avoided by a sex offender who retains his U.S. passport but moves to a foreign country, which puts him outside the scope of the registration requirements of domestic U.S. jurisdictions. Congress should address this issue by strengthening the IML legislation to require passport marking of sex offenders living abroad if (i) they would be required to register under SORNA if they returned to the United States, or (ii) they would be required to register under the law of any U.S. jurisdiction in which they were previously required to register if they returned to that jurisdiction.

Finally, Congress and the states must *reject* legislative proposals reflecting recommendations that conflict with the SORNA national standards for sex offender registration and notification – such as the American Law Institute’s “Model Penal Code: Sexual Assault and Related Offenses.” If adopted, proposals of this nature would greatly decrease the availability of information to law enforcement and the public about released sex offenders in the community and weaken the sex offender registration and notification systems that protect children and adults from sexual abuse and exploitation.

### *Funding/Resources*

The Adam Walsh Act Implementation Grant program provides funding to support grantee registration jurisdictions in one or more of their sex offender registration and notification activities. SORNA also includes a federal justice assistance funding reduction for states that have

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<sup>17</sup> See, e.g., *United States v. Montgomery*, 966 F.3d 335 (5<sup>th</sup> Cir. 2020); *United States v. Walker*, 931 F.3d 576 (7<sup>th</sup> Cir. 2019); *United States v. George*, 223 F.Supp.3d 159 (S.D.N.Y. 2016); *United States v. Salazar*, 2021 WL 2366086 (D. Or. 2021); *United States v. Torchia*, 2021 WL 2169484, 2166863 (N.D. Ga. 2021); *United States v. Laney*, 2021 WL 1821188 (N.D. Iowa 2021).

not yet substantially implemented SORNA. But those jurisdictions may recapture the designated funds to work specifically on furthering their implementation of SORNA, and most continue to request that reallocation. Jurisdictions that have not yet substantially implemented SORNA should continue to be encouraged to utilize the available grants and recapture the reduced funding to enhance their registration and notification programs and meet the minimum national standards.