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Federal Requirements for State and Military Registered Sex Offender Management

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SUMMARY

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Federal Requirements for State and Military Registered Sex Offender Management

The federal government plays a role in the management of individuals convicted of certain sex offenses. In a law enforcement capacity, it enforces federal laws involving sexual abuse, online predatory offenses, and other related federal crimes. In addition, Congress has enacted legislation that encourages the development of state sex offender registries, urges states to punish recalcitrant sex offenders, and provides incentives for state and local law enforcement to make certain information on sex offenders publicly available, and has taken other steps involving the registration of sex offenders and notification of the community. The focus of this report is on federal legislation affecting sex offender policy, which largely centers on sex offender registration and notification.

All states have sex offender registration and notification laws; however, these laws vary widely. Congress has attempted to standardize the laws through legislation, most recently through the Sex Offender Registration and Notification Act (SORNA), a major component of the Adam Walsh Child Protection and Safety Act (Adam Walsh Act; P.L. 109-248) enacted in 2006. Among other things, SORNA created a three-tier classification system that dictates registration requirements for sex offenders based solely on the crime of conviction. As of 2020, 18 states, 4 territories, and 136 American Indian tribes had been found to have "substantially implemented SORNA." SORNA stated that jurisdictions that fail to comply with its requirements risk having their annual Edward Byrne Memorial Justice Assistance Grant (JAG) funds reduced by 10%. Although several noncompliant states have chosen to forfeit 10% of their JAG funds, the majority of noncompliant states have applied to have these funds reallocated and used solely to implement SORNA.

Investigating and prosecuting sex offenses and sex offender management are primarily state and local criminal justice issues; however, the federal government plays a role in sex offender registration and notification as well as other sex offender management issues not discussed in this report. The federal government (1) sets minimum requirements and baseline standards for states for sex offender registration and notification, (2) provides assistance to states via grants and law enforcement support in tracking down noncompliant offenders, (3) maintains a public national website that provides information on registered sex offenders, (4) maintains a national sex offender registry for assisting law enforcement, and (5) receives and transmits information on the international travel of sex offenders.

The Military Sex Offender Reporting Act of 2015 (MSORA) authorized the armed services to register military sex offenders. All armed services must now submit information regarding such offenders to a national database and public website after a custodial sentence or conviction in any court. The act is implemented through the Department of Defense registered sex offenders management program, which includes the Coast Guard at all times (whether it is part of the U.S. Navy or the Department of Homeland Security).

When a military sex offender is required to register after a conviction for a sex offense, the chain of command must provide notice of the offender's acknowledgment of the convicted sex offender registration requirements to the appropriate jurisdiction. Such notice is entered into a jurisdiction's sex offender registry through the Department of Justice SORNA Exchange Portal. After a military sex offender is released from a military confinement facility or sentenced without confinement, the designated officials must notify the armed service's criminal investigation organization of such offender's requirement for registration.

In recent years, several issues with sex offender registration and notification in the United States have been raised by state governments, the media, and academics. Congress may decide to address a number of these issues that fall under federal jurisdiction. Issues include noncompliance with the requirements of SORNA and the effectiveness of the act. Other areas of interest to Congress may include registration of sex offenders convicted of sex offenses under federal extraterritorial jurisdiction and Department of Defense registered sex offender management regarding military housing.

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Background

The federal government plays a role in the management of sex offenders. In a law enforcement capacity, it enforces federal laws involving sexual abuse, online predatory offenses, and other related federal crimes. Congress has also enacted legislation that encourages the development of state sex offender registries, urges states to punish noncompliant sex offenders, and incentivizes state and local law enforcement to make certain information on sex offenders available to the public, and it has taken other steps involving the registration of sex offenders and notification of the community.[1] Federal legislation affecting sex offender policy has largely centered on sex offender registration and notification, and therefore they are the focus of this report.

This report begins with a brief definition of sex offender and sex offender policy in the United States, followed by a description of the federal government's requirements for registered sex offender (RSO) management and the available federal assistance for such management. The report also examines the federal government's responsibilities for RSO management in the Department of Defense (DOD). It concludes with a discussion of select issues on which Congress may exercise additional oversight or address through legislation.

RSO Management

Sex offender is a general term used to describe an individual who has been convicted of a crime involving a sexual act (e.g., sexual abuse, forcible rape, sexual abuse of a child, incest, prostitution, sexual assault, conspiracy or attempt to commit a sex offense). In the United States, *sex offender policy* refers to how the federal government and tribal, local, and state governments handle sex offenders both during and after incarceration; however, it is how jurisdictions manage sex offenders after release from incarceration that is a primary focus of existing federal sex offender policy. Sex offenders are subject to many different management strategies including civil commitment, residence restrictions, registration and notification, and other policies aimed at preventing sexual offenses. As mentioned, federal legislation on this issue has largely focused on sex offender registration and notification.

Registration

Sex offender registration provides the public, as well as state and federal authorities, with publicly available information on certain convicted sex offenders before and after they have been released into the community.[2] All states have sex offender registries, but they are not uniform in the information they collect, how they classify offenders, or the types of offenders they require to register (e.g., several states do not require juvenile sex offenders to register under most circumstances). To be compliant with federal law, jurisdictions must register incarcerated sex offenders convicted of certain sex offenses *before* they are released from secured custody, or within three business days from sentencing for an offense mandating registration in the case of a sentence that does not involve incarceration.

[1] For example, federal law created new interstate requirements, including requiring each state to set up procedures for registering offenders from out of state and requiring registered offenders to register in states in which they worked or attended school if different from where they resided.

[2] For those required to register, registration is a mandatory condition for probation and supervised release, 18 U.S.C. §§3563(a)(8) and 3583(d), and 34 U.S.C. §20913.

Notification

In this report, the term *sex offender notification* refers to how a jurisdiction disseminates relevant information about certain convicted sex offenders to other agencies and the community. The primary method of public notification is to place an offender's name and relevant related information on a public website. In addition to registries, some states have additional notification practices.

Jurisdictions register offenders and notify the community according to a risk classification system. Although federal law has attempted to standardize risk classification across the states, there is still considerable variation. For example, New York classifies offenders based on crime of conviction and several other factors[3] and Pennsylvania classifies offenders based on crime of conviction alone.[4] Risk classification has implications for the type of information that may be released about an offender and the duration of registration.

Registry Data

According to the National Center for Missing & Exploited Children (NCMEC), as of December 2020, there were approximately 945,459 registered sex offenders in the United States.[5] NCMEC obtains sex offender data through a review of the individual sex offender registries of the 50 states, the District of Columbia, and the 5 inhabited U.S. territories. However, due to the variability in state laws and practices regarding sex offender registration, it may be best to consider this statistic as an estimate rather than a precise reflection of the total number of sex offenders subject to registration in the United States.[6] These data may include duplicates across state registries and other sources of error such as individuals who are incarcerated, have been deported, are deceased, or have moved out of state. There is also some variability in how information about people on the registry is collected (e.g., whether an offender's listed race is identified by the offender or a member of law enforcement). As a result of these variabilities, these data are considered here only at the national level, rather than comparing across individual states.

Federal Requirements for State RSO Management

Sex offense investigations and sex offender management are primarily state and local criminal justice issues, but the federal government plays a significant role in sex offender registration and notification. Aside from its role in prosecuting federal and military sex offenses, the federal government addresses sex offender registration and notification in multiple ways. It (1) sets requirements and baseline standards for states for sex offender registration and notification, (2) provides assistance to states via grants and law enforcement support for tracking down noncompliant offenders, (3) maintains a public national website that provides information on

[3] New York also considers factors regarding the offender, and the risk level is based on a court's assessment of whether the offender is likely to repeat the same or a similar offense and the danger the offender poses to the community. For more information regarding New York's risk level determination, see http://www.criminaljustice.ny.gov/nsor/risk_levels.htm.

[4] For more information regarding Pennsylvania's risk level determination, see https://www.soab.pa.gov/AboutSOAB/ProcessOverview/Pages/Registration.aspx.

[5] National Center for Missing & Exploited Children, *Map of Registered Sex Offenders in the United States*, December 8, 2020.

[6] Telephone conversation between CRS and Yiota Souras, Senior Vice President and General Counsel, and Staca Shehan, Vice President of the Analytical Services Division, NCMEC, March 3, 2021.

registered sex offenders, (4) maintains a national sex offender registry for assisting law enforcement, and (5) receives and transmits information on the international travel of sex offenders.

Federal Legislation

Congress has attempted to standardize sex offender registration and notification laws through legislation, principally through the Sex Offender Registration and Notification Act (SORNA), a major component of the Adam Walsh Child Protection and Safety Act (Adam Walsh Act; P.L. 109-248) enacted in 2006. Among other things, SORNA created a publicly available internet gateway to the information housed in state registries, searchable by offender name and location.

Federal law stipulates the following:

> An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—
>
> (1) inform the sex offender of the duties of a sex offender under this subchapter and explain those duties;
>
> (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and
>
> (3) ensure that the sex offender is registered.[7]

It also created a three-tier classification system for sex offenders based solely on the crime of conviction. Under federal law, the tiers are defined as follows:

> (2) Tier I sex offender
>
> The term "tier I sex offender" means a sex offender other than a tier II or tier III sex offender.
>
> (3) Tier II sex offender
>
> The term "tier II sex offender" means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—
>
> (A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:
>
> (i) sex trafficking (as described in section 1591 of title 18);
>
> (ii) coercion and enticement (as described in section 2422(b) of title 18);
>
> (iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a)) [1] of title 18;
>
> (iv) abusive sexual contact (as described in section 2244 of title 18);
>
> (B) involves—
>
> (i) use of a minor in a sexual performance;
>
> (ii) solicitation of a minor to practice prostitution; or
>
> (iii) production or distribution of child pornography; or
>
> (C) occurs after the offender becomes a tier I sex offender.

[7] 34 U.S.C. §20919(a).

(4)Tier III sex offender

The term "tier III sex offender" means a sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18); or

(ii) abusive sexual contact (as described in section 2244 of title 18) against a minor who has not attained the age of 13 years;

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.[8]

Tier I offenders are required to register for 15 years with annual in-person verifications. Tier II offenders are required to register for 25 years with in-person verification every six months. Tier III offenders must register for the remainder of their life and complete an in-person verification every three months.[9]

Over the last two decades, Congress has also passed a series of bills in response to concern over post-conviction management of sex offenders and public safety. The following legislation highlights some of the major changes in federal sex offender registration and notification law and policy, most of which supplement or have been folded into SORNA:[10]

- **Jacob Wetterling Crimes Against Children and Sexually Violent Registration Act (Jacob Wetterling Act):** Congress passed this law as part of the major omnibus crime bill of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994; P.L. 103-322) to *encourage* and establish guidelines for states to create and maintain a sex offender registration system.
- **Megan's Law (P.L. 104-145):** In 1996, Congress passed Megan's law to induce state and local law enforcement agencies to release relevant sex offender information that is necessary to protect the public (i.e., to *notify* the public). Congress also specified that "information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State."
- **Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (Lychner Act; P.L. 104-236):** This law amended the Jacob Wetterling Act to establish within the Federal Bureau of Investigation (FBI) a national database to track certain sex offenders.[11] It also required each sex offender who resides in a state that has not established a "minimally sufficient sexual offender registration program" to register with the FBI. Further, it provided that offenders required to register with the FBI must notify it of changes in residence; and in turn, the FBI must verify the offender's address. Under this law, the FBI may release relevant

[8] 34 U.S.C. §20911(2)-(4).

[9] DOJ, OJP, SMART Office, Sex Offender Registration and Notification Act Substantial Implementation Checklist – Revised (2020), p. 18, hereinafter "SORNA Checklist," https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/Substantial_Implementation_Checklist_2020.pdf.

[10] Aside from addressing sex offender registration and notification, these federal laws have amended criminal code, among other things, in an effort to protect the public from sex offenders.

[11] The database was established "to track the whereabouts and movement of—(1) each person who has been convicted of a criminal offense against a victim who is a minor; (2) each person who has been convicted of a sexually violent offense; and (3) each person who is a sexually violent predator." (P.L. 104-236).

information regarding an offender that is necessary to protect the public. The law also required the FBI to disclose offender information to federal, state, and local criminal justice agencies for purposes of law enforcement and community notification.

- **Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (P.L. 105-119) (amendments to existing federal sex offender laws):** In 1997, this appropriations act made several changes to sex offender requirements for states, including a change to the requirement that a state must designate a law enforcement agency to handle sex offender registration and notification. It also directed states to participate in the FBI's national sex offender registry according to guidelines issued later by the Attorney General. This law created new interstate requirements, including requiring each state to set up procedures for registering sex offenders from out of state and requiring registered sex offenders to register in states in which they worked or attended school if different from where they resided. The law also directed state courts to consider the recommendations of sex offender experts, victims' rights advocates, and representatives of law enforcement agencies when considering the status of a sexually violent predator.[12] The law extended registration requirements to sex offenders convicted in federal or military courts and required federal and military authorities to ensure that offenders are notified of the registration requirement.
- **Protection of Children From Sexual Predators Act (P.L. 105-314):** In 1998, this law required the Director of the Bureau of Justice Assistance to create a Sex Offender Management Assistance Program to assist states with the costs of complying with registration requirements.
- **Campus Sex Crimes Prevention Act:** As part of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), Congress passed the Campus Sex Crimes Prevention Act to require any individual who is required to register in a state to also notify each institution of higher education in that state at which the individual works or is a student, including notification of changes in enrollment or employment status. It also required that state procedures ensure that information collected on the individual is (1) promptly shared with the law enforcement agency with jurisdiction over the institution and (2) entered into the respective state data system. It amended the Higher Education Act of 1965 to require certain institutions of higher education[13] to advise the campus community about where sex offender registry data may be obtained.
- **Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (PROTECT Act; P.L. 108-21):** In 2003, the PROTECT Act required states to release information concerning persons registered as sex offenders, including the maintenance of a website containing publicly available registry

[12] The specific definition of a sexually violent predator varies across states; however, generally a sexually violent predator is an individual who has been convicted of a sexually violent offense and has been diagnosed with some mental abnormality or personality disorder that would make them a danger to the community. Previously, state courts were directed to consider the opinions of experts on sex offenders but not victims' advocates and law enforcement when making status determinations involving sexually violent predators (as proscribed by the Jacob Wetterling Act; Subtitle A of P.L. 103-322).

[13] The requirement applied to those institutions of higher education that are already required to disclose campus security policy and campus crime statistics data under the Higher Education Act of 1965.

information and instructions for correcting information alleged to be false.[14] It also required the Department of Justice (DOJ) to create a national website that links all state websites containing registry data and authorized appropriations for FY2004-FY2007 to assist states in complying with new requirements. Further, it authorized the use of Community Oriented Policing Services (COPS)[15] funding in assisting state and local law enforcement with sex offender registry management and offender compliance.

- **Sex Offender Registration and Notification Act (SORNA):** In 2006, SORNA (Title I of the Adam Walsh Child Protection and Safety Act; P.L. 109-248) absorbed and replaced many of the earlier registration and notification components noted above and amended federal standards for sex offender registration and notification in the states to make them more uniform and inclusive, among other things.[16] It established DOJ's Office of Sex Offender Sentencing, Monitoring, Apprehending, and Tracking (SMART Office) to administer the sex offender registration and notification standards, administer grant programs relating to the law's implementation,[17] and assist jurisdictions and organizations involved in sex offender registration and notification activities. Of note, SORNA contained a provision that allowed for a 10% reduction in funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program[18] for states that failed to comply with the requirements of SORNA.
- **Keeping the Internet Devoid of Sexual Predators Act of 2008 (P.L. 110-400):** This law expanded SORNA to require sex offenders to report "internet identifiers"[19] to registries but specified that these records would remain private.
- **Military Sex Offender Reporting Act (P.L. 114-22):** This law was enacted as part of the Justice for Victims of Trafficking Act of 2015. It amended SORNA to require that DOD provide DOJ with sex offender registration information for inclusion in the national registry and the Dru Sjodin National Sex Offender Public Website for any qualifying offense under the Uniform Code of Military Justice (UCMJ). Such information is provided when a servicemember is convicted, sentenced, and released from confinement (if applicable). According to the SMART Office, "the Department of Defense continues to work on developing a system to meet its responsibilities under these new provisions."[20]
- **International Megan's Law (P.L. 114-119):** In 2016, this law amended SORNA to require that sex offenders report intended international travel and established a criminal penalty (fine and/or up to 10 years in prison) for not reporting this

[14] P.L. 108-21, §604 (a)

[15] For more information about COPS, see CRS Report RL33308, *Community Oriented Policing Services (COPS): In Brief*.

[16] For a legal sketch of the Adam Walsh Act, see CRS Report RS22646, *Adam Walsh Child Protection and Safety Act: A Sketch*.

[17] SORNA established the Sex Offender Management Assistance (SOMA) program to award grants to jurisdictions to offset the costs of implementing SORNA.

[18] For more information about the JAG Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program: In Brief* (available to congressional clients upon request).

[19] For purposes of the law, the term *internet identifiers* means email addresses and other designations used for self-identification or routing in internet communication or posting. See 34 U.S.C. §20916a(e)(2).

[20] DOJ, OJP, SMART Office, *Military Convictions Under SORNA*, https://smart.ojp.gov/sorna/military-convictions.

information. The law also includes a statement expressing Congress' desire for the State Department to work to establish "reciprocal international agreements."

Federal Program

Although all states have sex offender registries, the SMART Office conducts implementation progress checks to determine whether states, territories, and tribes have "substantially implemented" the specific requirements in SORNA.[21] As of May 13, 2020, 18 states, 4 territories, and 136 American Indian tribes had been found to have substantially implemented SORNA.[22] However, this should not be taken to mean that the remaining states, territories, and tribes have not implemented SORNA at all. Nineteen additional states and territories have met the minimum requirements for two or more of SORNA's five requirements.[23] The SMART Office has been able to work with tribes to construct new regulations that align with SORNA rather than amending existing legislation as is often necessary for state governments.[24] Some states have publicly objected to the requirements of SORNA, most notably due to concerns about the requirement to list juvenile sex offenders.

Juvenile Offender Registration

SORNA requires the registration of juveniles who were convicted (often referred to as an *adjudication* in juvenile courts) of a sex offense equivalent to or more severe than aggravated sexual assault (including attempt or conspiracy to commit qualifying offenses) who were age 14 or older at the time they committed the offense.[25] Under SORNA, these juvenile offenders are classified as tier III offenders, which normally requires lifetime registration; however, juveniles may have their registration terminated if they keep a clean record[26] for 25 years. Many jurisdictions have objected to aspects of the juvenile registration requirement, and DOJ has released supplementary guidelines to address some of the concerns expressed by jurisdictions, advocates, and researchers.

In 2011, DOJ published a set of guidelines that gave jurisdictions some discretion in deciding whether to publicly post information about "sex offenders required to register on the basis of juvenile delinquency adjudications."[27] Thus, jurisdictions may decide whether or not to publicly post information about minors who are convicted of a qualifying sex offense in a juvenile court. However, these guidelines do not allow for discretion with minors convicted as adults. Under the guidelines, jurisdictions that decide not to publicly list information about juvenile sex offenders who are required to register are also not required to share registration information about these offenders to outside organizations designated in SORNA (e.g., some schools, public housing, social services,

[21] The five requirements are immediate notification and exchange of information between jurisdictions, the inclusion of certain sex offenses in the registry, inclusion of the required registration information, alignment with SORNA on where registration is required, and the times at which registration is required. For the SMART Office checklist including greater detail about the five implementation requirements, see SORNA Checklist.

[22] DOJ, OJP, SMART Office, *Substantially Implemented*, https://smart.ojp.gov/sorna/substantially-implemented.

[23] DOJ, OJP, SMART Office, *Sex Offender Registration and Notification Act (SORNA) State and Territory Implementation Progress Check*, https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/sorna-progress-check.pdf.

[24] Telephone conversation between CRS and Scott Matson, Associate Director of the SMART Office, and Marnie Dollinger, Senior Policy Advisor at the SMART Office, February 11, 2021.

[25] DOJ, OJP, SMART Office, *Juvenile Registration and Notification Requirements Under SORNA*, https://smart.ojp.gov/sorna/juvenile-offenders#substantial-implementation. Note that juveniles who are prosecuted and convicted as adults are subject to adult SORNA requirements.

[26] As defined in 34 U.S.C. §20915(b)(1), a clean record means no convictions for any offense for which a sentence of longer than a year may be imposed; no conviction for any sex offense; completion of any period of supervised release, probation, and parole; and completion of a certified sex offender treatment program.

[27] DOJ, "Supplemental Guidelines for Sex Offender Registration and Notification," 76 *Federal Register* 1630, January 11, 2011 (hereinafter "Guidelines 2011").

volunteer entities).[28] In 2016, DOJ published another set of guidelines detailing the circumstances in which the SMART Office may review a state's juvenile registration policies to determine whether it may be considered to have substantially implemented SORNA despite the policies not being fully aligned with requirements.[29]

National Standards

As noted, several federal laws have established standards for sex offender registration in states. Most recently, SORNA did the following:

- set tier classification of offenders[30] based solely on the crime of conviction while
  - making changes in the required minimum length of registration;[31]
  - expanding the group of sex offenders and sex offenses for which registration is required;
  - expanding the amount of information offenders must provide to the registry and the amount of offender information made available to the public; and
  - requiring sex offenders to register and maintain current data in each jurisdiction where they attend school, work, and reside;
- extended the standard registration and notification requirements to tribal jurisdictions; and
- authorized the Attorney General to extend reporting requirements to offenders convicted *before* enactment of SORNA.[32]

SORNA contained a provision stating jurisdictions that fail to comply with its requirements risk having their annual JAG funds reduced by 10%. Multiple states, territories, and tribal jurisdictions have "substantially implemented SORNA."[33] Although several noncompliant states have chosen to risk losing 10% of their JAG funds, the majority of noncompliant states have applied to have these funds reallocated and used solely to implement SORNA.[34]

[28] Guidelines 2011.

[29] DOJ, "Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act," 81 *Federal Register* 21397, April 11, 2016.

[30] To comply with SORNA, jurisdictions do not have to use the tier labels but they must comply with the requirements of each tier. According to the SMART Office, "SORNA requirements are met as long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier." See The National Guidelines for Sex Offender Registration and Notification, https://www.ojp.gov/smart/pdfs/final_sornaguidelines.pdf.

[31] Section 115(a) of SORNA requires that sex offenders keep registration current for 15 years for Tier I offenders, for 25 years for Tier II offenders, and for life for Tier III offenders.

[32] For a list and detailed legal analysis of SORNA requirements, see CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*.

[33] For a list of jurisdictions that have successfully implemented SORNA, see https://smart.ojp.gov/sorna/substantially-implemented.

[34] DOJ, OJP, SMART Office, *Substantial Implementation, Reallocation of Byrne/JAG Grant Funds*, https://smart.ojp.gov/sorna/substantial-implementation. The following states applied for reallocation in 2020: Alaska, Arizona, Arkansas, California, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Montana, New Hampshire, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, West Virginia, and Wisconsin.

National Sex Offender Registry

As established under the Lychner Act, the FBI operates a national database of each individual who has been convicted of a criminal offense against a minor, has been convicted of a sexually violent offense, or is a sexually violent predator. The National Sex Offenders Registry (NSOR) is one of 14 persons files[35] in the FBI's National Crime Information Center (NCIC). Unlike the Dru Sjodin National Sex Offender Public Website (NSOPW), the FBI's registry is utilized for law enforcement purposes only. The FBI may release relevant information to federal, state, and local law enforcement agencies, and public notification by the FBI is made only when necessary to protect the public.

National Sex Offender Website

The National Sex Offender Public Registry was established by the Office of Justice Programs (OJP) in 2005, and it was renamed by the Adam Walsh Act as the NSOPW.[36] This website is administered by the SMART Office and links all public registry sites in the United States to form one national search site that anyone may use to seek information on sex offenders.[37]

Federal Assistance for State RSO Management

According to its mission statement, the SMART Office assists states and criminal justice professionals with SORNA implementation and other sex offender management activities needed to ensure public safety.[38] Some of the ways that the federal government directly assists states with sex offender management include grants and tracking violators. Federal research efforts that are related to sex offenders include specific assessments of registry efficacy and the Sex Offender Management Assessment and Planning Initiative (SOMAPI).[39] The SOMAPI is designed to assess the general state of sex offender management practices and share evidence-based practice and policy.[40]

Grants

The federal government supports state agencies with sex offender management through grant support. SORNA authorized grants for states—including a grant to assist with the implementation of sex offender registration requirements under the law.[41] Also, COPS grantees may use funds to ensure sex offender registration and notification compliance.[42] The SMART Office administers

[35] Persons files include Supervised Release, National Sex Offender Registry, Foreign Fugitive, Immigration Violator, Missing Person, Protection Order, Unidentified Person, Protective Interest, Gang, Known or Appropriately Suspected Terrorist, Wanted Person, Identity Theft, Violent Person, and National Instant Criminal Background Check System (NICS) Denied Transaction. For more information on the FBI's National Crime Information Center, see https://www.fbi.gov/services/cjis/ncic.

[36] 34 U.S.C. §20922.

[37] For more information, see http://www.nsopw.gov/.

[38] See SMART Mission at https://smart.ojp.gov/about.

[39] 34 U.S.C. §20928. Sex Offender Management Assistance (SOMA) program.

[40] For more information, see https://smart.ojp.gov/somapi/initiative-home.

[41] 34 U.S.C. §10691. SORNA authorized other grants as well but this report only discusses sex offender registration and notification policy.

[42] See 34 U.S.C. §10381(b)(14). COPS grant funds may be used "to assist a State or Indian tribe in enforcing a law throughout the State or tribal community that requires that a convicted sex offender register his or her address with a

the SORNA implementation grant as part of the Adam Walsh Implementation grant program. Although authorization for appropriations expired in 2009, appropriations have been consistently provided—including $20 million in each of FY2017-FY2021.[43] In addition to grants for SORNA implementation, these funds go toward other Adam Walsh Act purposes, including the National Sex Offender Website.[44]

Enforcement

As established by SORNA, the United States Marshals Service (USMS, or U.S. Marshals) is the primary federal agency responsible for investigating sex offender registration violations. Among other related duties, U.S. Marshals assist state, local, tribal, and territorial governments in the location and apprehension of sex offenders who fail to comply with federal registration requirements. The USMS leads initiatives to "assist state, local, tribal, and territorial jurisdictions in locating and apprehending sex offenders who fail to comply with their sex offender registration requirements."[45] For example, in FY2019[46] the U.S. Marshals conducted 63,386 registration compliance checks, arrested 11,053 sex offenders,[47] made 339 arrests for Adam Walsh Act violations (e.g., attempting to avoid registration requirements), and handled 408 sex offender compliance and enforcement operations.

The USMS also operates the National Sex Offender Targeting Center (NSOTC), an intelligence and operations center that supports the identification, investigation, location, apprehension, and prosecution of noncompliant, unregistered fugitive sex offenders. The NSOTC works with the SMART Office and the NCMEC to support law enforcement agencies in the pursuit of unregistered and noncompliant sex offenders.[48]

After International Megan's Law was enacted in 2016, USMS is also responsible for notifying destination countries, as well as federal, state, local, and foreign agencies, about sex offenders' international travel plans.[49] USMS monitors sex offenders' compliance with registration and travel reporting requirements in partnership with the Department of Homeland Security's (DHS's) Angel Watch Center. Since 2016, USMS has handled more than 10,200 international travel notifications and 480 investigative leads for possible sex offender registration violations at the federal, state, or local levels.[50]

State, tribal, or local law enforcement agency and be subject to criminal prosecution for failure to comply."

[43] For more information about Adam Walsh Implementation grant program, see the FY2015 grant solicitation: http://www.smart.gov/pdfs/SMARTFY15AWA.pdf.

[44] For a better understanding of how these funds are spent, see Department of Justice, Office of Justice Programs, *Justice Department Announces $17.6 Million in Awards to Support Sex Offender Registration, Intervention and Treatment*, September 29, 2014, http://ojp.gov/newsroom/pressreleases/2014/ojppr092914.pdf.

[45] See *U.S. Marshals Service*, fact sheets, 2021, https://www.usmarshals.gov/duties/factsheets/sex_offender_ops.pdf (hereinafter, "2021 fact sheet").

[46] 2021 fact sheet.

[47] Per the 2021 fact sheet, sex offenses include "sexual assault, failure to register/noncompliance with the national sex offender registry and other offenses."

[48] 2021 fact sheet.

[49] Ibid.

[50] Ibid.

Prosecution

Failure to register as a sex offender, or update a registration, when required by SORNA is a federal offense.[51] DOJ may also prosecute sex offenders convicted under state law if they knowingly fail to register or update a registration when required, they engage in foreign or interstate travel, or they enter, leave, or reside on an Indian reservation.[52] The punishment for these offenses can include fines and up to 10 years in prison. If a sex offender is convicted of committing a violent federal crime while in violation of the federal *failure to register* provision, a custodial sentence may be up to 30 years.

Travel Notification

As mandated by SORNA, the Attorney General[53] is responsible for informing relevant jurisdictions about individuals entering the United States who are required to register as a sex offender.[54] The Supplemental Guidelines for Sex Offender Registration and Notification[55] requires registered sex offenders to report their international travel 21 days before departing the United States. Under International Megan's Law, failure to report international travel is punishable by a fine and/or up to 10 years in prison.

Current federal efforts to track the international whereabouts of registered sex offenders include those of the USMS, International Criminal Police Organization (INTERPOL) Washington-U.S. National Central Bureau (USNCB), and U.S. Immigration and Customs Enforcement (ICE), a component of DHS. These agencies use data from state and local jurisdictions and DHS's U.S. Customs and Border Protection (CBP) to identify registered sex offenders departing the United States, and USNCB and ICE notify foreign officials in some instances.[56] The USMS, USNCB, and ICE may also receive notification of registered sex offenders traveling to the United States.

Research on Registry Effectiveness

A large body[57] of research exists on the effects of sex offender registration[58]—for example, its effects on the lives of offenders, on the recidivism rates of registered offenders, and on societal rates of sexual violence (e.g., how registries may act as crime deterrents). Researchers have

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[51] 18 U.S.C. §2250. For more information, see CRS Report R42691, *SORNA: An Abridged Legal Analysis of 18 U.S.C. §2250 (Failure to Register as a Sex Offender)*.

[52] Ibid.

[53] In consultation with the Secretary of State and Secretary of Homeland Security.

[54] 34 U.S.C. §20930.

[55] Guidelines 2011.

[56] According to the U.S. Government Accountability Office (GAO), USNCB and ICE have notified foreign officials of sex offenders only in *some* instances. USNCB notifies its INTERPOL counterparts, while ICE, through the Angel Watch program, notifies its foreign law enforcement counterparts. See GAO, *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, GAO-13-200, February 14, 2013, p. 24, http://www.gao.gov/products/GAO-13-200.

[57] To illustrate, a search on Google Scholar using the phrase "Sex Offender Registration in the United States" returned 53,000 hits.

[58] Much of this research should be interpreted in the context of both federal and state sex offender laws. State and local governments can, and often do, have more stringent requirements than federal law requires. As most sex offenses are prosecuted at the state or local levels, it can be difficult to separate the effects of these registration requirements from those unique to federal policy.

frequently questioned the efficacy of sex offender registries at preventing sex crimes[59]; however, there is also evidence to suggest registries do benefit public safety[60] and that criminal justice professionals support public registration but also express concern about how the public may use this information.[61]

Although there is a large body of research on sex offender registries, some observers critique its quality and its ability to isolate the effects of registries. A causal hypothesis (i.e., a hypothesis in which a change in an experimental variable is predicted to cause a change in a dependent variable) can be tested using a study design in which subjects are randomly assigned to an experimental or control condition. In an experimental condition, subjects are exposed to a given experimental variable (e.g., sex offender registration) and an outcome (e.g., sexual reoffending) is measured. In a control condition, no experimental variable is introduced and the same outcome is measured. This type of study can provide evidence that a given experimental variable (e.g., sex offender registration) had a hypothesized influence on a specific outcome (e.g., reduced sexual reoffending). However, designing an experimental study that meets these conditions can be challenging, and in some cases may be inappropriate, particularly in the social sciences. Researchers cannot randomly assign participants to many variables of interest such as race or gender. It is also unlikely that a jurisdiction would, or even could, agree to not enforce a sanction that exists in statute for a randomly selected sample in study. Most relevant here, researchers would be asking states to violate sex offender registration laws and randomly assign some convicted sex offenders to be listed on a public registry and others to not be listed to compare outcomes between the two groups. Registration requirements also make it unlikely researchers could compare some existing (i.e., nonrandom) sample of unregistered convicted adult sex offenders to a registered group.[62] As a result, social scientists may not be able to provide direct evidence of a causal relationship between sex offender registration and a particular outcome (e.g., desistance from sex offending).

[59] See, for example, J.J. Prescott and Jonah E. Rockoff, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?," *The Journal of Law and Economics*, vol. 54, no. 1 (February 2011); and Jeff A. Bouffard and LaQuana N. Askew, "Time-Series Analyses of the Impact of Sex Offender Registration and Notification Law Implementation and Subsequent Modifications on Rates of Sexual Offenses," *Crime & Delinquency*, vol. 65, no. 11 (October 2019).

[60] See, for example, J.J. Prescott and Jonah E. Rockoff, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?," *The Journal of Law and Economics*, vol. 54, no. 1 (February 2011); and David M. Bierie, "The utility of sex offender registration: a research note," *Journal of Sexual Aggression*, vol. 22, no. 2 (May 2016).

[61] See, for example, Elizabeth Ehrhardt Mustaine, Richard Tewksbury, David Patrick Connor and Brian K. Payne, "Criminal Justice Officials' Views of Sex Offenders, Sex Offender Registration, Community Notification, and Residency Restrictions," *Justice System Journal*, vol. 36, no. 1 (January 2015); and Andrew J. Harris, Jill S. Levenson, Christopher Lobanov-Rostovsky, and Scott M. Walfield, "Law enforcement perspectives on sex offender registration and notification: Effectiveness, challenges, and policy priorities," *Criminal Justice Policy Review*, vol. 29, no. 4 (May 2018).

[62] An interesting exception exists among juveniles adjudicated of committing a sex offense, as some states do not register juveniles and the federal government gave states latitude concerning publically registering juveniles. As a result, researchers have been able to design studies that compare registered versus unregistered juvenile sex offenders. For example, one study compared a sample of 106 registered and 66 unregistered juvenile sex offenders and results indicated that at an average follow-up of about four years, unregistered juveniles showed a similar likelihood to reoffend compared to registered youth. (Michael F. Caldwell and Casey Dickinson, "Sex offender registration and recidivism risk in juvenile sexual offenders," *Behavioral Sciences & the Law*, vol. 27, no. 6 (November 2009)). See also, Elizabeth J. Letourneau et al., "Effects of juvenile sex offender registration on adolescent well-being: An empirical examination," *Psychology, Public Policy, and Law*, vol. 24, no. 1 (February 2018).

Federal Requirements for DOD RSO Management

Sex offenses typically are subject to the criminal law of a state, district, territory, or tribal land entity. The term *jurisdiction* in SORNA includes such entities, but it does not include military justice jurisdiction.[63] The military justice system is a federal legal regime that is not associated with a geographical area.[64] UCMJ offenses are status-based and apply to certain individuals regardless of where they are committed.[65] The common reasons given for having a separate justice system for the military include the need for good order, speedy trials, unit discipline, and worldwide duty.[66]

After the enactment of the Jacob Wetterling Act in 1994, DOD began advising servicemembers to register as sex offenders when required by state law.[67] Although individual states started to require sex offender registration in 1994, the federal criminal justice system, including the military justice system, did not.[68] In 2006, SORNA incorporated UCMJ offenses into its definition of a *criminal offense*.[69] Recognition of UCMJ sex offenses meant that military sex offenders were now required by federal law to comply with sex offender registration laws. Such recognition only standardized the meaning of the term *criminal offense* amongst the states; SORNA did not require registration of sex offenders prosecuted within the federal criminal justice system.[70]

Inclusion of UCMJ offenses in SORNA did however create a responsibility for the armed services to ensure that military sex offenders registered in a jurisdiction.[71] Additionally, a month after the enactment of SORNA, a military justice appellate court established a requirement for defense attorneys to advise their clients of any state registration obligations triggered by a court-martial conviction for a sex offense.[72] The court noted that failure to inform a servicemember of sex offense registration requirements could be grounds for an ineffective counsel claim by a servicemember-client against a defense attorney.

Even though the new legislation and jurisprudential rules of 2006 meant the armed services had various advisement requirements associated with registration and notification in a jurisdiction, the absence of a national database for military justice system authorities to register sex offenders remained a limitation. The DOD Inspector General (DODIG) noted this limitation in a 2014 report that found DOD's lack of agency over the military sex offender registration process to be a

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[63] 34 U.S.C. §20911(10).

[64] 10 U.S.C. §805 (UCMJ Art. 5), "This chapter applies in all places." The term *extraterritorial jurisdiction* is defined as a court's ability to exercise power beyond its territorial limits (*Black's Law Dictionary* 1018 (11th ed. 2019)).

[65] 10 U.S.C. §802 (UCMJ Art. 2); for more information, see CRS Report R46503, *Military Courts-Martial Under the Military Justice Act of 2016*.

[66] Joseph A. Bishop Jr., *The Case for Military Justice*, Fall 1973, 62 Military Law Review 215, 216-220 (1973).

[67] P.L. 103-322; and DOD, *Instruction 1325.7, Administration of Military Correctional Facilities and Clemency and Parole Authority*, December 17, 1999, §6.18.5 (expired issuance). See current issuance at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132507p.pdf?ver=2019-02-19-075650-100.

[68] Department of the Army, *Pamphlet 27-50-435, The Army Lawyer, Sex Offender Registration Laws and the Uniform Code of Military Justice: A Primer*, August 2009, §1.

[69] 34 U.S.C. §20911(6).

[70] DOD, *Instruction 5525.20, Registered Sex Offender (RSO) Management in DoD*, November 14, 2016 (hereinafter, "DODI 5525.20"), §1.2.

[71] Ibid., §1.2.

[72] United States v. Miller, 63 M.J. 452 (C.A.A.F. 2006).

possible reason for military sex offender noncompliance with notification registry requirements.[73] The DODIG also identified the armed services' disparate RSO management policies as a potential contributing factor to compliance shortcomings. (See the "Inspector General Evaluations" section.)

Congress responded to the DODIG report with the Military Sex Offender Reporting Act of 2015 (MSORA), which authorized the armed services to register military sex offenders as part of a national database.[74] All armed services must now submit information regarding such offenders to the NSOR and NSOPW after a qualifying sex offense conviction that does not result in incarceration of the offender or at the conclusion of a custodial sentence.[75] MSORA is implemented through DOD's RSO management program, which includes the Coast Guard at all times (whether it is part of DHS or the U.S. Navy).[76]

Armed Services Personnel

Individuals convicted of certain sex offenses have been prohibited from entering military service since 2013.[77] The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) is required to establish and maintain RSO policy in DOD.[78] The USD(P&R) must also maintain statistics on the total number of active duty servicemembers in each armed service required to register as sex offenders.[79] The DODIG is responsible for all DOD criminal investigation and military law enforcement program guidance, evaluation, and monitoring, to include ensuring that each military criminal investigation organization (MCIO) complies with DOD RSO management requirements. (See **Table 1** for a listing of MCIOs.[80]) Also, the Under Secretary of Defense for Intelligence and Security (USD(I&S)) is responsible for DOD security, generally, among other matters.[81] The secretaries concerned must develop policy or procedures for RSO matters within the armed services that are consistent with MSORA and DOD RSO policy.[82]

Table 1. Military Criminal Investigation Organizations

Department	Law Enforcement Agency	Designation	Location
Army	Criminal Investigation Command	CID	Quantico, VA
Navy	Naval Criminal Investigative Service	NCIS	Quantico, VA

[73] DOD Inspector General, *Report No. DODIG-2014-103, Evaluation of DoD Compliance with the Sex Offender Registration and Notification Act*, August 29, 2014 (see "Evaluation Findings").

[74] P.L. 114-22, §502; 34 U.S.C. §20931.

[75] DODI 5525.20, §3.2.

[76] P.L. 115-232, §544; 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*; DODI 5525.20, §1.1.

[77] 10 U.S.C. §657 (see also 10 U.S.C. §504 note); DOD, *Instruction 1304.26, Qualification Standards for Enlistment, Appointment, and Induction*, March 23, 2015, Encl. 3, §2.h(3). See also CRS In Focus IF11147, *Defense Primer: Active Duty Enlisted Recruiting*.

[78] 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*, (a); DODI 5525.20, §2.1.

[79] 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*, (b)(3).

[80] DODI 5525.20, §2.2.

[81] DOD, *Directive 5143.01, Under Secretary of Defense for Intelligence and Security* (USD(I&S)), October 24, 2014, §3.

[82] DODI 5525.20, §2.3.

Department	Law Enforcement Agency	Designation	Location
Air Force	Air Force Office of Special Investigations	AFOSI	Quantico, VA
Homeland Security	Coast Guard Investigative Service	CGIS	Washington, DC

Source: Army, *Regulation 195-2, Criminal Investigation Activities*, July 21, 2020; Navy, *Instruction 5430.107a, Mission and Functions of the Naval Criminal Investigative Service*, June 19, 2019; Air Force, *Instruction 71-101, Criminal Investigations Program*, July 1, 2019; Coast Guard, *Instruction 5520.5F, Coast Guard Investigative Service Roles and Responsibilities*, November 30, 2011.

Notes: NCIS is a Department of the Navy entity that serves as the MCIO of the U.S. Navy (USN) and U.S. Marine Corps (USMC). Law enforcement organizations in the USN and USMC are the USN Master at Arms, USMC Police, and USMC Criminal Investigation Division. AFSOI is a Department of the Air Force entity that serves as the MCIO of the U.S. Air Force and U.S. Space Force. All armed services are part of a military department, except the U.S. Coast Guard, which is part of the Department of Homeland Security.

Covered Offense

Military sex offenders are servicemembers convicted either of a *covered offense* (selected UCMJ offenses are listed in **Table 2**) or a civilian offense that requires sex offender registration.[83] There were 23 covered offenses in the UCMJ until 2007; this number increased to 58 by 2012. (See **Appendix A**, **Appendix B**, and **Appendix C**.) Any servicemember convicted by a special or a general court-martial of a covered offense must register in the jurisdiction in which the individual resides, works, and attends school within the three days immediately after release from confinement or sentencing (if not confined).[84] This registration requirement and three-day timeline also applies to servicemembers convicted in domestic or foreign civilian courts of an offense that is equivalent or analogous to a covered offense. The USD(P&R) is required to compile data on servicemembers convicted of a covered offense, including data on their sex offender registration status.[85] Military sex offenders who do not comply with notification registration requirements are subject to prosecution under the UCMJ for failure to obey orders or regulations.[86]

Table 2. Selected UCMJ Offenses Requiring Sex Offender Processing

Article	Offense
120	Rape and Sexual Assault Generally
120b	Rape and Sexual Assault of a Child
120c	Other Sexual Misconduct
133	Conduct Unbecoming an Officer, Other[a]
134[b]	Prostitution
134	Assault with Intent to Commit Sodomy
134	Kidnapping of A Minor (By a Person Not Parent)
134	Conduct Prejudicial to Good Order and Discipline

[83] 34 U.S.C. §20911, (1)-(5). For more information, see CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*.

[84] 10 U.S.C. §816 (Art. 16); and DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013 (hereinafter, "DODI 1325.07"), p. 79.

[85] 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*, (b)(2).

[86] 10 U.S.C. §892 (Art. 92).

Article	Offense
134	Possession of Child Pornography
134	Possession of Child Pornography, with Intent to Distribute
134	Distribution of Child Pornography
134	Production of Child Pornography

Source: DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013, pp. 84-86.

Notes: See **Appendix A** for a detailed listing of the covered offenses that derive from the principal UCMJ offenses in **Table 2** requiring sex offender processing. The covered offenses requiring a *special victim counsel* pursuant to 10 U.S.C. §1044e are Article 120, Article 120b, and Article 120c.

a. Article 133 (10 U.S.C. §933), the general offense of *conduct unbecoming an officer and a gentleman* includes the specific offense of *committing or attempting to commit a crime involving moral turpitude* (United States, Manual for Courts-Martial (MCM), part 4, §90, 2019 edition).

b. Article 134 (10 U.S.C. §934) makes punishable acts in three categories of offenses not specifically covered in any other article of the UCMJ. They are offenses that involve (1) disorders and neglects to the prejudice of good order and discipline in the Armed Forces; (2) conduct of a nature to bring discredit upon the Armed Forces; and (3) noncapital crimes or offenses that violate federal civilian law (MCM, part 4, §91, 2019 edition).

Administrative Separation

A *separation* is an administrative action that can lead to a discharge from an armed service.[87] The most severe adverse action that can be taken against a servicemember administratively is a discharge with a service characterization of *under other than honorable conditions* (OTH).[88] Such characterization is possible when the reason for separation is based on an act, omission, or behavior that is a significant departure from the conduct expected of servicemembers.[89] A convening authority may initiate a separation proceeding against a servicemember for *sexual assault* or a *sexual offense* defined under the DOD Sexual Assault Prevention and Response (SAPR) Program.[90] Such proceedings likely would be for *misconduct* or *separation in lieu of a court martial* (ILO).[91] If a separation authority initiates proceedings against a servicemember for misconduct, the separation board has the option to recommend that the *respondent* be retained in service.[92] A separation decision is discretionary and part of an administrative due process, so it is possible that a separation authority could accept a board's

[87] A *separation* may be voluntary (servicemember-initiated) or involuntary (service-initiated) and it includes a *discharge*, release from active duty, release from custody and control of the armed services, or change in active or reserve status. A *discharge* is complete severance from all military status gained through enlistment or induction (DOD, *Instruction 1332.14, Enlisted Administrative Separations*, April 12, 2019, Glossary).

[88] DOD, *Instruction 1332.14, Enlisted Administrative Separations*, April 12, 2019 (hereinafter, "DODI 1332.14"), Encl. 4, §1. See also Coast Guard, *COMDTINST M1000.4, Military Separations*, August 2018.

[89] DODI 1332.14, Encl. 4, §3.

[90] DODI 1332.14, Encl. 4; A *convening authority* is a commanding officer who is authorized to act as a *separation authority* (See footnote 92) (DODI 1332.14, Glossary). For the purpose of administrative separation, the term *sexual assault* has the meaning given for it in the DOD Sexual Assault Prevention and Response (SAPR) Program and the term *sexual offense* means rape, sexual assault, forcible sodomy, or an attempt to commit one or more of these offenses (DOD *Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures*, March 28, 2013, as amended). The SAPR definition of *sexual assault* is intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent, which includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.

[91] DODI 1332.14, Encl. 3, §§10, 11. See also Army, *Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)*, November 7, 2013.

[92] DODI 1332.14, Encl. 5. A *separation authority* is an official authorized to take final action with respect to a specified type of separation. A *respondent* is an enlisted servicemember who has been notified that action is being taken to separate him or her from some type of military service (DODI 1332.14, Glossary).

recommendation to retain a respondent, even if sexual assault or a sexual offense was the basis for such proceedings.[93] Under certain circumstances, an enlisted servicemember may request an ILO separation.[94] Such charges must include an offense with a possible punishment of punitive discharge, which includes all covered offenses.[95] Characterization of service for an ILO separation normally will be OTH, but characterization as general (under honorable conditions) is an option.[96] Separation for a SAPR Program-defined *sexual assault* or *sexual offense* is an administrative procedure, not a criminal trial. If such separation is not predicated on a covered offense conviction, the underlying conduct is not a reportable sex offense.

Custodial Sentence

Congress's concern in the late nineteenth century over the anachronistic practices in military stockades and the dangerous conditions in civilian prisons housing military inmates led to legislation that authorized the building of military prisons.[97] The principal reasons given for such prisons were the maltreatment of military prisoners in state penitentiaries and the potential cost-savings of fees paid to states for housing them.[98] Servicemembers who receive a custodial sentence as punishment by a court-martial typically are incarcerated in a military confinement facility (MCF).[99] A listing of selected MCFs is displayed in **Table 3**.

The USD(P&R) has oversight responsibility for confinement and corrections in DOD.[100] The secretaries concerned are authorized to establish and operate confinement facilities for military offenders.[101] The armed services administer the corrections programs for such offenders.[102] The Secretary of Homeland Security has not established MCFs; the Coast Guard primarily relies on the Navy's corrections program.[103] An armed service's MCF may include military offenders from any service.[104]

Table 3. Select Military Correctional Facilities

Level	Name	Location
I	U.S. Marine Corps Correctional Facility	Camp Lejeune, NC
I	U.S. Air Force Confinement Facility	Keesler Air Force Base, MS
I	U.S. Air Force Confinement Facility	Lackland Air Force Base, TX

[93] DODI 1332.14, Encl. 4.

[94] DODI 1332.14, Encl. 3, §11.

[95] United States, Manual for Courts-Martial (MCM), 2019 edition, Appendix 12. (See also **Appendix A** of this CRS report.)

[96] DODI 1332.14, Encl. 3, §11.

[97] Lawrence J. Morris, *Our Mission, No Future: The Case For Closing the United States Army Disciplinary Barracks*, Fall 1996 Kansas Journal of Law & Public Policy, 77-82 (1996).

[98] H. Shindler, *History of the United States Military Prison* (Kansas: The Army Service Schools Press, 1911).

[99] 10 U.S.C. §858 (Art. 58); DODI 1325.07, Encl. 2, §2; Glossary.

[100] DOD, *Directive 1325.04 Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities*, August 17, 2001 (hereinafter, "DODD 1325.04"), §5.1.

[101] 10 U.S.C. §951.

[102] Army, *Regulation 190-47, The Army Corrections System*, June 16, 2006; Navy, *Secretary Instruction 1640.9D, Department of the Navy Corrections Program*, May 15, 2019; Air Force, *Instruction 31-105, Air Force Corrections System*, April 12, 2017.

[103] Coast Guard, *Instruction Manual M1600.2, Discipline and Conduct*, October 22, 2020, pp. 1-24 – 1-26.

[104] DODD 1325.04, §4.7.

Level	Name	Location
II	U.S. Navy Consolidated Brig	Charleston, SC
II	U.S. Navy Consolidated Brig	Chesapeake, VA
II	U.S. Army Midwest Joint Regional Correctional Facility	Fort Leavenworth, KS
II	U.S. Navy Correctional Facility	Miramar, CA
III	U.S. Army Disciplinary Barracks	Fort Leavenworth, KS

Source: DOD Inspector General, *Report No. DODIG-2014-103, Evaluation of DoD Compliance with the Sex Offender Registration and Notification Act*, August 29, 2014, p. 53.

Notes: Level I facilities are minimum-security facilities capable of providing pre-trial and post-trial confinement for prisoners classified as minimum risk; Level II facilities are medium-security facilities capable of providing pre-trial and post-trial confinement (up to five years) for medium-risk prisoners; Level III facilities are maximum-security facilities designed for high-risk, long-term (including life), and death sentence prisoners, and are capable of providing post-trial confinement exceeding that of Level II facilities (DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013, §4).

The MCF military sex offender population at the beginning of 2021 is displayed in **Table 4**. The percentage of military sex offenders noted in **Table 5** compared to the offender population in MCFs that did not commit sex offenses suggests that 65% of the MCF population are military sex offenders. Around 52% of the MCF sex offender population is from the Army, which as an armed service is approximately 35% of the FY2021 total active duty end-strength.[105] In contrast, DOJ reported that the percentage of prisoners sentenced for rape or sexual assault under the jurisdiction of state correctional authorities in 2019 was 13%.[106]

Table 4. MCF Military Sex Offender Population

By DOD Annual Correctional Report Sex Offense Categories

Offenses	USA	USN	USMC	USAF	USCG	Total
Rape with Adult	49	5	13	19	0	86
Rape with Child	82	18	18	19	0	137
Sexual Assault with Adult	73	10	18	21	1	123
Sexual Assault with Child	34	19	15	24	1	93
Sexual Misconduct with Adult	30	3	1	7	0	41
Sexual Misconduct with Child	97	22	20	41	2	182
Other Sexual Offenses	32	18	13	31	3	97
Total	397	95	98	162	7	759
Percentage	52.3%	12.5%	12.9%	21.3%	0.9%	100%

Source: U.S. Army; U.S. Navy; U.S. Marine Corps; U.S. Air Force; *DD Form 2720, Annual Correctional Report*, DD-P&R(A)2067, January 1, 2021, §13.b.

Notes: DOD correctional report sex offense categories consist of registerable sex offenses. Military sex offenders transferred to Bureau of Prisons federal facilities are not included in the data. USA=Army, USN=Navy, USMC=Marine Corps, USAF=Air Force (including Space Force), USCG=U.S. Coast Guard.

[105] P.L. 116-283, §401 (total active duty end-strength authorized for FY2021).

[106] DOJ, OJP, *Prisoners in 2019, Table 13*, October 2020, p. 20, at https://bjs.ojp.gov/content/pub/pdf/p19.pdf.

Table 5. MCF Military Offender Population

By Rank of Sex Offenders and Other Offenders

Rank	Sex Offenders	Percentage	Other Offenders	Percentage	Total
Officer	44	75.9%	14	24.1%	58
Enlisted	715	63.7%	407	36.3%	1,122
Total	759	64.3%	421	35.7%	1,180

Source: U.S. Army; U.S. Navy; U.S. Marine Corps; U.S. Air Force; *DD Form 2720, Annual Correctional Report*, DD-P&R(A)2067, January 1, 2021, §§8.b, 13.b.

Notes: Data does not include military offenders transferred to Bureau of Prisons facilities.

The armed services may transfer a military offender housed in an MCF to a federal Bureau of Prisons (BOP) facility as a *military inmate*.[107] The Army serves as DOD's executive agent for such transfers. BOP is required to accept and maintain up to 500 military inmates.[108] Military inmates in BOP facilities are subject to the same treatment and discipline as other BOP inmates. The *Annual Correctional Report* issued by each armed service with a corrections program does not contain information for BOP military inmates.[109] The military sex offender population among military inmates in BOP facilities as of May 20, 2021, is displayed in **Table 6**.

Table 6. BOP Military Inmate Sex Offender Population

By Service and BOP Sex Offense Category

Offenses	USA	USN	USAF	Total	Percentage
Rape	53	10	8	71	61.2%
Sodomy	19	4	6	29	25.0%
Carnal Knowledge	8	4	2	14	12.1%
Prostitution & Pandering	1	0	0	1	0.9%
Other Sex Offenses	1	0	0	1	0.9%
Total	82	18	16	116	100%
Percentage	70.7%	15.5%	13.8%	100%	

Source: BOP, Office of Research & Evaluation, *Military Inmates Convicted of Sexual Offenses in Federal Custody - By Branch*, May 20, 2021.

Notes: BOP sex offense categories consist of registerable sex offenses. USA=Army, USN=Navy, USAF=Air Force (including Space Force).

The percentage of military inmate sex offenders in BOP facilities noted in **Table 7** compared to other military inmates in such facilities suggests that 47% of its military inmate population are military sex offenders. Around 70% of the military inmate sex offenders in BOP facilities are from the Army. The combined totals for MCF military offenders and BOP military inmates, and

[107] DODI 1325.07, Encl. 2, §15. The term *military inmate* refers to all military inmates received from the U.S. Army pursuant to the 1994 memorandum of agreement between the Army and BOP regarding the transfer of military prisoners to BOP facilities (BOP, *Program Statement 5110.16, Administration of Sentence for Military Inmates*, September 13, 2011, §1.c).

[108] DOD and DOJ, *Memorandum of Agreement Between Department of the Army and the Federal Bureau of Prisons, Transfer of Military Prisoners to the Federal Bureau of Prisons*, May 27, 1994, §4.a.

[109] BOP, *Program Statement 5110.16, Administration of Sentence for Military Inmates*, September 13, 2011, §1.

the combined total for MCF military sex offenders and military inmate sex offenders, are noted in **Table 8**.

Table 7. BOP Military Inmate Population

By Service of Sex Offenders and Other Offenders

Service	Sex Offenders	Percentage	Other Offenders	Percentage	Total
USA	82	49.4%	84	50.6%	166
USN	18	34.6%	34	65.4%	52
USAF	16	55.2%	13	44.8%	29
Total	116	47.0%	131	53.0%	247

Source: BOP, Office of Research & Evaluation, *Military Inmates Convicted of Sexual Offenses in Federal Custody - By Branch*, May 20, 2021.

Notes: USA=Army, USN=Navy, USAF=Air Force (including Space Force).

Table 8. Combined MCF Military Offender and BOP Military Inmate Population

By Service of Sex Offenders and Other Offenders

Service	Sex Offenders	Percentage	Other Offenders	Percentage	Total
USA	479	66.3%	244	33.7%	723
USN	113	54.3%	95	45.7%	208
USMC	98	42.1%	135	57.9%	233
USAF	178	69.5%	78	30.5%	256
USCG	7	100.0%	0	0.0%	7
Total	875	61.3%	552	38.7%	1427

Source: U.S. Army; U.S. Navy; U.S. Marine Corps; U.S. Air Force; *DD Form 2720, Annual Correctional Report*, DD-P&R(A)2067, January 1, 2021, §§8.b, 13.b.; BOP, Office of Research & Evaluation, *Military Inmates Convicted of Sexual Offenses in Federal Custody - By Branch*, May 20, 2021.

Notes: USA=Army, USN=Navy, USMC=Marine Corps, USAF=Air Force (including Space Force), USCG=U.S. Coast Guard.

Registration, Notification, and Tracking

MSORA requires DOD to provide DOJ specified information regarding individuals who upon being convicted or sentenced for a covered offense are required under SORNA to register as a sex offender.[110] The armed services document such information with a single DOD form that is used for the notifications required immediately after conviction or confinement.[111]

Post-Conviction

When a military sex offender is required to register after a conviction for a sex offense, the commander concerned must provide the applicable jurisdiction with the offender's

[110] 34 U.S.C. §20931; DODI 5525.20, §1.2.

[111] DOD, *DD Form 2791, Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*, March 2013 (hereinafter, "*DD Form 2791*, March 2013").

acknowledgement of his or her sex offender registration requirements and document such offender's expected place of residence.[112] The commander must also give such acknowledgement and residence information to the service MCIO and the USMS NSOTC. Finally, the armed service must enter the offender's acknowledgement and residence information into the appropriate jurisdiction's notification registry through DOJ's SORNA Exchange Portal.[113]

Post-Sentence

After a military sex offender is released from an MCF facility, officials must provide notice of the release and such offender's requirement for registration to the service MCIO. The MCIO is then required to add the offender's name to the NCIC NSOR file. This information remains in the NSOR file until the MCIO is notified by appropriate authorities of the offender's registration in a jurisdiction.

Affiliated Personnel

A DOD-affiliated RSO is an individual with a nexus to DOD who is identified in the NCIC NSOR file as an RSO.[114] Although not categorized further by DOD, there are five possible groups, among others, of which most DOD-affiliated RSOs could be a member:

- military retirees,
- servicemember dependents,[115]
- veterans authorized access to military installations,
- DOD civilian employees or government contractors, and
- military sex offenders not punitively discharged or administratively separated.

RSO policy in DOD is meant to enhance community safety on domestic and overseas military installations by managing RSOs that have an affiliation with DOD.[116] Such policy states that it identifies affiliated RSOs for the purpose of criminal justice administration, screening current or prospective employees or volunteers, and protection of the public, particularly children on DOD installations.[117]

Managing RSOs does not include searching, detaining, or arresting individuals because of their RSO status.[118] Such status cannot be the basis for action by command, security, or human resource officials. Any action taken against an RSO requires a lawful investigation followed by an authorized adjudicative process that permits adverse measures.

[112] DODI 5525.20, §3.2; *DD Form 2791*, March 2013.

[113] DODI 5525.20, §3.2.

[114] Ibid., §G.2.

[115] See 37 U.S.C. §401(a) for the definition the term *dependent*.

[116] DODI 5525.20, §1.2.

[117] Ibid., §3.1.

[118] Ibid., §3.1.

Identification, Reporting, and Monitoring

The primary method for identifying DOD-affiliated RSOs is through NCIC NSOR file queries.[119] DOD law enforcement agencies must report NSOR file matches to installation law enforcement officials, who are to provide the commanders concerned with publicly releasable criminal history information for DOD-affiliated RSOs. For members of the National Guard, DOD is to report such matches to the National Guard Bureau (NGB) provost marshal.[120] The NGB is required to make the appropriate notifications to state officials. If DOD receives sex offender information for a foreign court conviction of a DOD affiliate living or working in the United States, DOD law enforcement agencies are to report this information to the U.S. National Crime Bureau within the International Criminal Police Organization (INTERPOL).[121]

DOD relies on a process for monitoring RSOs that it describes as the Identity Matching Engine for Security and Analysis (IMESA).[122] The principal database for personally identifiable information (PII) used by DOD to query the NCIC NSOR file is the Defense Enrollment Eligibility Reporting System (DEERS).[123] This system contains PII for active, reserve, or retired servicemembers and their dependents. DEERS also includes such information for DOD civilians, sponsored foreign military personnel, and other DOD-designated personnel, such as the Military Health System patient population.[124]

International Travel

All DOD-affiliated RSOs planning to travel abroad must inform appropriate officials of their plans at least 21 days in advance of the departure.[125] Such information must also disclose whether the RSO intends to reside, work, or attend school outside the United States. If DOD has knowledge of any DOD-affiliated RSO's plans for unofficial international travel, or to move overseas, it is required to share this information with the USMS and the appropriate notification registry office.[126] The armed services also have the option of restricting official travel overseas by military sex offenders.[127]

Military Installations

The military departments are required to monitor RSOs on DOD installations, particularly DOD-affiliated RSOs who live on an installation or work in a DOD facility.[128] Such monitoring occurs through the commanders concerned and DOD installation law enforcement.[129] RSO monitoring

[119] Ibid., §3.1.

[120] Ibid., §3.2.

[121] Ibid., §3.2.

[122] Ibid., §3.1.

[123] Ibid., §3.1.

[124] Ibid., §3.1.

[125] Ibid., §3.5.

[126] Ibid., §3.5.

[127] See Army, *Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses)*, November 7, 2013; Navy, *Operations Instruction 1752.3, Policy for Sex Offender Tracking, Assignment and Access Restrictions within the Navy*, May 27, 2009.

[128] DODI 5525.20, §1.2.

[129] For background information on installations, see CRS In Focus IF11263, *Defense Primer: Military Installations Management*.

includes enforcement of any restrictions associated with an individual's sex offense conviction. When notified of a DOD-affiliated RSO's presence, installation law enforcement officials are to coordinate with the relevant notification registry office to determine if the RSO is subject to any restrictions. DOD officials must then establish whether that jurisdiction's law enforcement agencies intend to monitor the DOD-affiliated RSO for compliance. If such agencies are unable or unwilling to monitor the RSO, DOD installation law enforcement are to monitor the individual in coordination with the jurisdiction.[130] DOD policy requires installations to have an adequate number of law enforcement officers specially trained in RSO monitoring.[131]

Housing Restrictions

DOD-affiliated RSO management is a DOD-wide program applicable to facilities, individuals, and installations within the armed services.[132] RSO management policy for DOD-controlled housing is to provide "DoD housing consistent with Federal and State laws to impose registered sex offender residency restrictions."[133] Such policy presumably incorporates SORNA, MSORA, and relevant state law, but it does not appear to restrict RSOs further or otherwise preclude an RSO from living in DOD-controlled housing. Among the armed services, the Navy, Marine Corps, and Coast Guard have a policy expressly prohibiting an RSO from occupying housing under such services' control.[134] These three maritime services also have an RSO disclosure requirement in their housing application processes that is meant to ensure compliance with such prohibitions.[135] Although the Army and Air Force appear to permit RSO occupancy of housing under their control, they do have disclosure requirements for RSO occupants, like the maritime services.[136]

RSO Occupancy Data

DOD is required to maintain statistics on the total number of active duty servicemembers required to register as sex offenders, but the total number of DOD-affiliated RSOs living in DOD-controlled housing "is not data that is normally reported by DoD installations."[137] If it did collect such data, DOD would categorize it as controlled unclassified information (CUI).[138] Such

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[130] DODI 5525.20, §3.3.

[131] Ibid., §3.3.

[132] 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*; DODI 5525.20, §1.1.

[133] DODM 4165.63-M, Encl. 2, §5.f.

[134] Navy, *Installation Command Instruction 1752.1, Policy for Sex Offender Tracking, Assignment, and Installation Access Restrictions,* February 7, 2011 (hereinafter, "CNICINST 1752.1"); Marine Corps, *Policy Letter, Registered Sex Offenders Prohibited Occupancy and Access to Marine Corps Government-Owned, Leased, or Privatized Family Housing*, December 31, 2008 (hereinafter, "USMC Policy, *Registered Sex Offenders Prohibited Occupancy and Access*"); Coast Guard, ALCOAST COMDT NOTICE ACN 013/21 (SSIC 11101), *Sex Offender Policy Acknowledgement and Disclosure Form*, 041441Z FEB 21 (hereinafter, "COMDT NOTICE ACN 013/21"), §3.

[135] Navy, *Form CNIC 11103/1, Sex Offender Policy Acknowledgement & Disclosure*, February 2011 (also used by Marine Corps); DHS, Coast Guard, *Form 5370A, Sex Offender Policy Acknowledgement and Disclosure*, February 2021.

[136] Army, *Regulation 420-1, Army Facilities Management,* February 12, 2008, §3-16; Air Force, *Instruction 32-6000, Housing Management,* March 18, 2020, §2-12; Air Force, *Form 4422, Sex Offender Disclosure and Acknowledgement*, July 2010.

[137] 10 U.S.C. §131 Note, *Oversight of Registered Sex Offender Management Program*, (b)(3); email to CRS from DOD, Office of the Assistant Secretary of Defense (OASD) for Legislative Affairs (LA), May 17, 2021.

[138] Email to CRS from DOD, Office of the Assistant Secretary of Defense (OASD) for Legislative Affairs (LA), May 17, 2021 ("this data ... would be CUI").

information typically is not released to the public. CUI is information the executive branch creates or possesses that a law, regulation, or federal policy requires or permits an agency to handle using safeguarding or dissemination controls.[139]

Inspector General Evaluations

In 2014, the DODIG issued an evaluation of DOD's compliance with SORNA and the efficacy of its programs for monitoring DOD-affiliated RSOs.[140] In 2020, the DODIG issued an evaluation of DOD law enforcement agencies' compliance with various FBI criminal history and information reporting programs.[141] One of the programs evaluated in the most recent report was the RSO management program established by MSORA, particularly its reporting requirements.

SORNA Compliance

The DODIG evaluation published in 2014 determined that DOD was compliant with its policies for SORNA reporting, however such policies were issued before MSORA was enacted. Under the earlier policies, designated officials were supposed to ensure that a military sex offender knew and understood what his or her notification registration requirements were in a relevant jurisdiction. Although compliance was found, the evaluation noted that the various notification registration management processes among the military services needed improvement to achieve greater efficacy.[142] The evaluation also determined that DOD did not have the policies needed to account for RSOs with access to DOD installations or identify DOD affiliates who committed sex offenses while overseas.[143]

MSORA Compliance

The DODIG evaluation published in 2020 examined DOD military sex offender reporting requirements under MSORA, among other matters. Of the 912 offenders in the evaluation, it identified 86 subjects that the armed services in DOD were required track and register.[144] According to the evaluation, the armed services properly reported 78 of the 86 subjects. Although the armed services responsible for the unreported subjects were not able to account for their noncompliance, the evaluation determined that the remaining eight subjects registered in the relevant jurisdiction if they were required to do so.[145]

Select Issues for Congress

Congress may decide to address a number of issues currently associated with sex offender registration and notification in the United States. These issues include states' noncompliance with

[139] 32 C.F.R. §2002.4(h).

[140] DOD Inspector General, *Report No. DODIG-2014-103, Evaluation of DoD Compliance with the Sex Offender Registration and Notification Act*, August 29, 2014 (hereinafter, "Report No. DODIG-2014-103").

[141] DOD Inspector General, *Report No. DODIG- 2020-064, Evaluation of DoD Law Enforcement Organization Submissions of Criminal History Information to the Federal Bureau of Investigation*, February 21, 2020 (hereinafter, "Report No. DODIG- 2020-064").

[142] Report No. DODIG-2014-103 (see Findings A and B).

[143] Ibid. (see Findings C and D).

[144] Report No. DODIG- 2020-064, p. 86.

[145] Ibid., p. 96.

requirements of SORNA, the effectiveness of SORNA, RSO access to DOD installations or housing, and RSO management of sex offenders under extraterritorial jurisdictions.

Noncompliance with SORNA

As mentioned previously, the majority of states have not fully complied with the requirements of SORNA. A recent report from the Library of Congress's Federal Research Division (FRD) included an analysis of 2018 state implementation reviews from the SMART Office.[146] FRD created a taxonomy to represent the frequency with which certain obstacles to full implementation were identified by noncompliant states. For example, major obstacles, or those affecting 50% or more of the noncompliant states, were "Offenses That Must Be Included in the Registry, Keeping the Registration Current, Verification/Appearance Requirements, and Public Registry Website Requirements."[147] The FRD report also cited a 2009 survey conducted by SEARCH, the National Consortium for Justice Information and Statistics, in which 12 of the 47 surveyed states highlighted the cost of implementation as a concern.[148] As mentioned previously, several states have opted to forego 10% of their JAG funds due to unwillingness to comply with SORNA, while others instead apply each year for reallocation of the funding penalty to use on implementation.[149] Congress may wish to address states' noncompliance by removing or changing certain requirements or no longer allowing states to apply for reallocation of the funding penalty.

Effectiveness of SORNA

In considering states' noncompliance and objections to SORNA, Congress may consider the utility of standardizing registration and notification across the states and the effectiveness of SORNA policy. Some researchers have also questioned other aspects of SORNA, including the utility of the classification scheme, the cost, and its overall effect on crime rates and recidivism.[150] Research has indicated that criminal justice professionals typically support the existence of public registries, but they also express concerns about the quality of the data and how the public may understand and use it.[151] GAO identified mixed results from implementing jurisdictions: it found that jurisdictions reported both positive and negative effects of SORNA implementation. Some stakeholders reported enhanced information sharing on registered sex offenders, while others reported that implementation increased workloads and caused difficulties for registered offenders in their attempts to reintegrate into the community.[152]

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[146] Library of Congress, Federal Research Division, Sex Offender Registration and Notification Act: Implementation Challenges for States—Summary and Assessment of Research, October 2020 (hereinafter, "FRD").

[147] FRD, p. 27. See chart on that page for list of significant, moderate, and minor obstacles as well.

[148] FRD, pp. 14-15.

[149] DOJ, OJP, SMART Office, *Substantial Implementation, Reallocation of Byrne/JAG Grant Funds*, https://smart.ojp.gov/sorna/substantial-implementation.

[150] See the "Research on Registry Effectiveness" section.

[151] See, for example, Elizabeth Ehrhardt Mustaine, Richard Tewksbury, David Patrick Connor, and Brian K. Payne, "Criminal Justice Officials' Views of Sex Offenders, Sex Offender Registration, Community Notification, and Residency Restrictions," *Justice System Journal*, vol. 36, no. 1 (January 2015); and Andrew J. Harris, Jill S. Levenson, Christopher Lobanov-Rostovsky, and Scott M. Walfield, "Law enforcement perspectives on sex offender registration and notification: Effectiveness, challenges, and policy priorities," *Criminal Justice Policy Review*, vol. 29, no. 4 (May 2018).

[152] U.S. Government Accountability Office (GAO), *SEX OFFENDER REGISTRATION AND NOTIFICATION ACT: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects*, GAO-13-211, February 2013, http://www.gao.gov/assets/660/652032.pdf.

Congress may address these issues through changes to SORNA. For example, Congress may opt to remove the penalty for noncompliance with SORNA, leave it as is, or increase it. Alternatively, Congress may decide that standardization of registration and notification systems among the states is not necessary to public safety. Before making this decision, lawmakers may wish to require a scientific evaluation of how SORNA implementation has impacted public safety. Congress might also address any of the issues cited in this report through reauthorization of the Adam Walsh Act. Authorization for appropriations under this act expired in 2009. Should Congress wish to reauthorize certain programs under the Adam Walsh Act and/or amend it (and SORNA), it may elect to do so through reauthorizing the act or via other legislative means.

DOD-Affiliated RSOs

RSOs cannot enter the armed services, but it is possible for an RSO who joined a service before 2013, or a servicemember who becomes an RSO, to remain in the armed services.[153] It is not clear why the risk associated with RSOs attempting to enter the military since 2013 is greater than any risk associated with RSOs already in the military. There is an apparent incongruence between the certain presumption that all RSOs are unsuitable to enlist and the rebuttable presumption that some RSOs are suitable to continue serving.

DOD-Controlled Housing

There are possible inconsistencies among the armed services for prohibiting RSO occupancy of DOD-controlled housing.[154] DOD policy acknowledges that RSOs are allowed on DOD installations and it does not prohibit RSOs from living in DOD-controlled housing.[155] Each armed service has the discretion to establish an RSO prohibition for housing under its control.[156]

[153] 10 U.S.C. §657.

[154] 42 U.S.C. §13663.

[155] DODI 5525.20; DODM 4165.63-M, Encl. 2, §5.f.

[156] CNICINST 1752.1; Marine Corps, USMC Policy, *Registered Sex Offenders Prohibited Occupancy and Access*; COMDT NOTICE ACN 013/21, §3.

Appendix A. Covered Offenses: 2012 to Present

Table A-1. Registerable UCMJ Sex Offenses On or After June 28, 2012

Article	Offense
120(a)	Rape, using unlawful force
120(a)	Rape
120(a)	Rape, using force causing or likely to cause death or grievous bodily harm to any person
120(a)	Rape, threatening that other person unconscious
120(a)	Rape, first rending that person unconscious
120(a)	Rape, administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct
120(b)	Sexual Assault
120(c)	Aggravated Sexual Contact
120(c)	Abusive Sexual Contact
120(c)	Aggravated Sexual Contact, using lawful force
120(c)	Aggravated Sexual Contact, using force causing or likely to cause death or grievous bodily harm to any person
120(c)	Aggravated Sexual Contact, threatening or placing that person in fear that any person will be subject to death, grievous bodily harm, or kidnapping
120(c)	Aggravated Sexual Contact, first rendering that other person unconscious
120(c)	Aggravated Sexual Contact, administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct
120(d)	Abusive Sexual Contact, threatening or placing that other person in fear
120(d)	Abusive Sexual Contact, making a fraudulent representation that the sexual contact serves a professional purpose
120(d)	Abusive Sexual Contact, inducing a belief by any artifice, pretense, or concealment that the person is another person
120(d)	Abusive Sexual Contact, by committing sexual contact upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual contact is occurring
120(d)	Abusive Sexual Contact, by committing sexual contact upon another person when the other person is incapable of consenting to the sexual contact due to impairment by any drug, intoxicant, other similar substance, and that condition is known or reasonably should be known by the other person
120(d)	Abusive sexual contact, by committing sexual contact upon another person when the other person is incapable of consenting to the sexual contact due to impairment [b]y a mental disease or defect or physical disability and that condition is known or reasonably should be known by the person
120b(a)	Rape of a Child (Under 12 years of age)
120b(a)	Rape of a Child (Has attained the age of 12)
120b(a)	Rape of a Child, at least 12 years of age, by threatening or placing that child in fear
120b(a)	Rape of a Child, at least 12 years of age, by rendering that child unconscious
120(a)	Rape of a Child, at least 12 years of age, by administering to that child a drug, intoxicant, or other similar substance

120b(b)	Sexual Assault of a Child
120b(c)	Sexual Abuse of a Child, committing a lewd act with sexual contact
120(b)	Sexual Assault, threatening or placing that other person in fear
120(b)	Sexual Assault, making a fraudulent representation that the sexual act serves a professional purpose
120(b)	Sexual Assault, including a belief by an artifice, pretense, or concealment that the person is another person
120(b)	Sexual Assault, by committing a sexual act upon another person when the person knows or reasonably should know that the sexual act is occurring
120(b)	Sexual Assault, by committing a sexual act upon another person when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person
120(b)	Sexual Assault, by committing a sexual act upon another person when the other person is incapable of consenting to the sexual act due to impairment by a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person
120b(c)	Sexual Abuse of a Child, committing lewd act by intentionally exposing one's genitalia, anus, buttocks, or female areola or nipple
120b(c)	Sexual Abuse of a Child, committing lewd act by communicating indecent language
120b(c)	Sexual Abuse of a Child, committing lewd act with indecent contact
120c(a)	Indecent Viewing, Visual Recording, or Broadcasting knowingly and wrongfully viewing the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy
120c(a)	Indecent Viewing, Visual Recording, or Broadcasting – knowingly photographing, videotaping, filming, or recording by any means the private area of another person, without other person's consent and under circumstances in which that other person has a reasonable expectation of privacy
120c(a)	Indecent Viewing, Visual Recording, or Broadcasting – knowingly broadcasting or distributing any such recordings that the person knew or reasonably should have known were made without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy
120c(b)	Forcible Pandering
120c(c)	Indecent Exposure
133	Conduct Unbecoming an Officer, Other
134	Prostitution
134	Assault with Intent to Commit Sodomy
134	Kidnapping of a Minor (by a person not parent)
134	Conduct Prejudicial to Good Order and Discipline (involving any conduct listed in this table)
134	Possession of Child Pornography
134	Possession of Child Pornography, with intent to distribute
134	Distribution of Child Pornography
134	Production of Child Pornography
80	Attempt (to commit any of the foregoing)
81	Conspiracy (to commit any of the foregoing)
82	Solicitation (to commit any of the foregoing)

Source: DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013, Appendix 4 to Enclosure 2, Table 6, pp. 84-86.

Appendix B. Covered Offenses: 2007 to 2012

Table B-1. Registerable UCMJ Sex Offenses on or After October 1, 2007, and Before June 28, 2012

Article	Offense
120(a)(1)	Rape. Using Force
120(a)(2)	Rape. Causing Grievous Bodily Harm
120(a)(3)	Rape. Threatening Death, Grievous Bodily Harm, Kidnapping
120(a)(4)	Rape. Rendering Unconscious
120(a)(5)	Rape. Administering Drug, Intoxicant, Or Similar Substance
120(b)(1)	Rape Of Child. 12 to 16 Years Old
120(b)(2)	Rape Of Child. Under 12 Years Old
120(b)(2)	Rape Of Child. Using Force
120(b)(2)	Rape Of Child. Causing Grievous Bodily Harm
120(b)(2)	Rape Of Child. Threatening Death, Grievous Bodily Harm, Kidnapping
120(b)(2)	Rape Of Child. 12 - Under 16 Years Old. Administering Drug, Intoxicant, Or Similar Substance. Rending Another Person Unconscious
120(b)(2)	Rape of a Child Administering Drug, Intoxicant, or Similar Substance
120(c)(1)(A)	Aggravated Sexual Assault. Threatening Or Placing in Fear (Other than Of Death, Grievous Bodily Harm, Kidnapping)
120(c)(1)(B)	Aggravated Sexual Assault. Causing Bodily Harm
120(c)(2)	Aggravated Sexual Assault. When Victim is Substantially Incapacitated/Unable to Appraise Act, or Decline Participation, Or Communicate Unwillingness
120(c)	Aggravated Sexual Assault when Victim is Substantially Incapable to Communicate Unwillingness
120(d)	Aggravated Sexual Assault of a Child. 12 - Under 16 Years Old
120(e)	Aggravated Sexual Contact by Administering a Drug, Intoxicant, or Other Similar Substance
120(e)	Aggravated Sexual Contact.
120(e)	Aggravated Sexual Contact. with a Child 12 to 16 Years Old Causing Grievous Bodily Harm
120(e)	Aggravated Sexual Contact with a Child Under 12 Years Old
120(e)	Aggravated Sexual Contact. Using Force
120(e)	Aggravated Sexual Contact. Using or Displaying a Dangerous Weapon
120(e)	Aggravated Sexual Contact Using Physical Violence, Strength, Power, or Restraint to any Person
120(e)	Aggravated Sexual Contact by Causing Grievous Bodily Harm
120(e)	Aggravated Sexual Contact by Using Threats or Placing in Fear
120(e)	Aggravated Sexual Contact by Rendering Another Unconscious
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old Using Force
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old Using or Displaying a Dangerous Weapon

120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old by Suggestion or Possession of a Dangerous Weapon or Object
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old Using Violence, Strength, Power, or Restraint to any Person
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old by Causing Grievous Bodily Harm
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old by Using Threats or Placing in Fear
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old by Rendering Another Unconscious
120(f)	Aggravated Sexual Contact with a Child 12 to 16 Years Old by Administering a Drug, Intoxicant, or Other Similar Substance
120(g)	Abusive Sexual Contact by Using Threats or Placing in Fear
120(g)	Abusive Sexual Conduct Causing Bodily Harm
120(g)	Abusive Sexual Conduct when Victim is Substantially Incapacitated/Unable to Appraise Act, Decline Participation, or Communicate Unwillingness
120(g)	Abusive Sexual Contact with a Child 12 to Under 16 Years Old
120(h)	Indecent Liberty with a Child
120(i)	Indecent Acts
120(j)	Forcible Pandering
120(k)	Wrongful Sexual Contact
120(l)	Indecent Exposure
125	Forcible Sodomy
125	Sodomy of a Minor 12 to 16 Years Old
125	Sodomy of a Minor Under 12 Years Old
125	Sodomy, Other Cases
133	Conduct Unbecoming an Officer that describes conduct Otherwise Listed in this Table
134	Prostitution Involving a Minor
134	Assault with Intent to Commit Rape
134	Assault with Intent to Commit Sodomy
134	Kidnapping of a Minor (by a person not parent)
134	Pornography Involving a Minor
134	Conduct Prejudicial to Good Order and Discipline (involving any conduct otherwise listed in this table)
80	Attempt (to commit any of the foregoing)
81	Conspiracy (to commit any of the foregoing)
82	Solicitation (to commit any of the foregoing)

Source: DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013, Appendix 4 to Enclosure 2, Table 5, pp. 82-83.

Appendix C. Covered Offenses: 2007 and Earlier

Table C-1. Registrable UCMJ Sex Offenses Before October 1, 2007

Article	Offense
120	Rape
120	Carnal Knowledge
125	Forcible Sodomy
125	Sodomy of a Minor
133	Conduct Unbecoming an Officer (involving any sexually violent offense or a criminal offense of a sexual nature against a Minor or kidnapping of a Minor)
134	Prostitution Involving a Minor
134	Pornography Involving a Minor
134	Indecent Assault
134	Assault with Intent to Commit Rape
134	Assault with Intent to Commit Sodomy
134	Indecent Act with a Minor
134	Indecent Language to a Minor
134	Indecent or Lewd Acts with Another
134	Possession of Child Pornography with Intent to Distribute
134	Distribution of Child Pornography
134	Production of Child Pornography
134	Kidnapping of a Minor (by a person not parent)
134	Conduct Prejudicial to Good Order and Discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a Minor or kidnapping of a Minor)
134	Assimilative Crime Conviction (of a sexually violent offense or a criminal offense of a sexual nature against a Minor)
134	Assimilative Crime Conviction of Kidnapping of a Minor
80	Attempt (to commit any of the foregoing)
81	Conspiracy (to commit any of the foregoing)
82	Solicitation (to commit any of the foregoing)

Source: DOD, *Instruction 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority*, March 11, 2013, Appendix 4 to Enclosure 2, Table 4, pp. 80-81.

Appendix D. Acronyms Used in This Report

JAG	Edward Byrne Memorial Justice Assistance Grant
BOP	Bureau of Prisons
CBP	U.S. Customs and Border Protection
COPS	Community Oriented Policing Services
DEERS	Defense Enrollment Eligibility Reporting System
DHS	U.S. Department of Homeland Security
DOD	U.S. Department of Defense
DOJ	U.S. Department of Justice
DODIG	DOD Inspector General
FBI	Federal Bureau of Investigation
FRD	Federal Research Division
HUD	U.S. Department of Housing and Urban Development
ICE	U.S. Immigration and Customs Enforcement
IMESA	Identity Matching Engine for Security and Analysis
INTERPOL	International Criminal Police Organization
MEJ	Military Extraterritorial Jurisdiction
MCF	Military confinement facility
MCIO	Military criminal investigative organization
MEJ	Military Extraterritorial Jurisdiction
MSORA	Military Sex Offender Reporting Act
NCMEC	National Center for Missing & Exploited Children
NCIC	National Crime Information Center
NGB	National Guard Bureau
NSOPW	National Sex Offender Public Website
NSOTC	National Sex Offender Targeting Center
OJP	Office of Justice Programs
OTH	Other than honorable conditions
PII	personally identifiable information
PROTECT	Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today
RSO	Registered sex offender
SMART	Sex Offender, Sentencing, Monitoring, Apprehending, and Tracking
SMTJ	Special Maritime and Territorial Jurisdiction of the United States
SOMAPI	Sex Offender Management Assessment and Planning Initiative
SORNA	Sex Offender Registration and Notification Act
UCMJ	Uniform Code of Military Justice
USA	U.S. Army

USAF	U.S. Air Force (Space Force)
USCG	U.S. Coast Guard
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USMC	U.S. Marine Corps
USMS	U.S. Marshals Service
USN	U.S. Navy
USNCB	Washington-U.S. National Central Bureau

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