

## STATES' SORNA IMPLEMENTATION JOURNEYS: LESSONS LEARNED AND POLICY IMPLICATIONS

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*Public policies requiring individuals convicted of sex offenses to register with law enforcement authorities, and in some cases granting public access to certain registry information, have been adopted by dozens of nations and provincial governments across the globe. Within the United States, sex offender registration and notification (SORN) policies are primarily established at the state level, but have come under increasing federal purview since the 1990s. Arising from a perceived need for improved interjurisdictional consistency and coordination, the 2006 Sex Offender Registration and Notification Act (SORNA) significantly broadened the scope and range of federal requirements for SORN systems operating within the states. Yet fourteen years following the law's passage, a significant majority of states have yet to meet SORNA implementation thresholds, amidst an array of legal, political, fiscal, and practical challenges. Prior research has offered aggregate-level insights concerning the barriers to SORNA implementation, but has not captured the "back stories" of state policy experiences. Addressing this knowledge gap, the current study offers an in-depth*

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*examination of state experiences in aligning their policies with federal mandates. Drawing on data gathered from a diverse sample of ten states, the analysis reveals significant variation in the breadth and extent of required system changes and in the legal, political, and organizational dynamics surrounding state responses to federal oversight. Ultimately, the study offers insights and perspectives that can inform the continued refinement of federal and state policies, and improve the public safety effectiveness of the nation's SORN systems.*

**Keywords:** *sex offender registration and notification, sex crime policy, SORNA, policy design, policy implementation*

## INTRODUCTION

Public policies requiring individuals convicted of sex offenses to register with law enforcement authorities, and in some cases granting public access to certain registry information, have been adopted by dozens of nations and provincial governments across the globe (SMART Office, 2016a). Such policies have been particularly prominent in the United States, where sex offender registration and notification (SORN) has become a ubiquitous fixture on the public safety landscape since the 1990s. SORN policies currently operate within all fifty US states, the District of Columbia, the principal US territories, and over 150 Native American tribal jurisdictions, creating an extensive web of independently operated systems for collecting, managing, and disseminating registration information.

Although managed at the state and local levels, the shape and contours of US SORN policies have come under greater federal government purview over the past quarter century. The Sex Offender Registration and Notification Act (SORNA), also known as Title I of the Adam Walsh Child Protection and Safety Act of 2006, represented a pivotal milestone in this evolving federal role. Arising from a perceived need for more effective interjurisdictional consistency and coordination, SORNA envisioned a “comprehensive national system” for the registration of individuals convicted of sexual offenses. Among its key provisions, SORNA significantly broadened the scope and range of federal requirements for SORN systems operating within covered jurisdictions; expanded interstate enforcement efforts through the US Marshals Service (USMS); set forth provisions for federal criminal prosecution of interstate “failure to register” cases;

established federal grant programs to support states in their efforts to improve their systems consistent with SORNA's goals; and called for improvements in federally managed information systems both to enhance the interjurisdictional exchange of information between criminal justice agencies and to expand access to registrant information to the public.

In the fourteen years since SORNA's passage, many states have resisted implementing the law's mandates, citing an array of legal, political, fiscal, and practical barriers and challenges (GAO, 2013; Harris & Lobanov-Rostovsky, 2010). As of early 2020, barely one-third of the fifty states (17 states) had been designated by the US Department of Justice (DOJ) as having met federal thresholds for "substantial implementation" of SORNA requirements (SMART Office, 2020). Over this time period, the number of registered sex offenders (RSOs) in the US has grown steadily, from approximately 600,000 individuals at the time of SORNA's passage to approximately 900,000 by late 2018.<sup>1</sup>

Findings from prior research have offered aggregate-level insights concerning the barriers to SORNA implementation, as well as the scope of state progress, or lack thereof, across SORNA standard areas (GAO, 2013; Harris & Lobanov-Rostovsky, 2010; Harris, Walfield, Lobanov-Rostovsky, & Cubellis, 2017). Although these studies provide important insights that can guide reforms to federal- and state-level policy, they have been limited in their ability to capture the "back stories" concerning state experiences with SORNA implementation, including the differential demands across states and the full nature of the systemic barriers to fulfilling federal mandates.

In this context, the current study builds upon existing literature by offering a more nuanced and in-depth perspective on state SORNA implementation experiences. The study's data are derived from a series of ten state case studies undertaken as part of a comprehensive nationwide project through a cooperative agreement with the US Department of Justice. The analysis reveals a range of experiences with SORNA implementation, including significant variation in the breadth and extent of required system changes; the legal, political, and organizational dynamics surrounding state efforts toward implementation; and the scope and nature of perceived implementation barriers. Ultimately, the analysis offers insights and

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1. Data based on authors' analysis of data provided by the National Center for Missing and Exploited Children, based on bi-annual counts conducted between 2005 and 2018.

perspectives that can inform the continued refinement of federal and state policies, and improve the public safety effectiveness of the nation's SORN systems.

This article begins with an overview of SORN policy in the United States, emphasizing SORNA's antecedent conditions, intent, and policy provisions. This opening section also reviews notable developments that have occurred since SORNA's passage, including the issues and challenges that have emerged surrounding the state-level implementation. Following an overview of the study and its methodology, we present a typology capturing the characteristics of states' journeys toward SORNA implementation status that emerged from the case study analysis. These narratives also coalesce around universal themes characterizing continued challenges and successes in implementing SORNA. The article concludes with a discussion of the implications of these findings for policy and future research.

## I. POLICY AND RESEARCH CONTEXT

Since the early 1990s, state and federal policymakers in the US have focused sustained attention on the community-based monitoring and management of individuals with sexual offense conviction histories. Central to these policy efforts has been the emergence and ongoing refinement of SORN policies and systems.

Although varied in their design and application, SORN policies and systems may be viewed as consisting of three inter-related elements. First, they include provisions that define and establish *requirements related to the RSO population*, including statutes and regulations setting forth both the circumstances under which a person is required to register, and the conditions, rules, and requirements with which registrants must comply. These provisions typically include the scope and range of information that registrants are required to update, the frequency with which they must update that information, and the duration of their registration requirements. Depending on the state, requirements may be uniformly applied to all RSOs (e.g., universal lifetime registration) or may be calibrated based on classification systems utilizing conviction offense and/or recidivism risk criteria.

The second set of elements encompasses the *roles and responsibilities of SORN implementing agencies*, including entities charged with registry

oversight and management, local law enforcement, prosecutors, and others with duties in the registration and enforcement process. As such, these policy provisions set forth the parameters for operational systems needed to carry out SORN policies, including the maintenance and verification of registry data, information system management, compliance enforcement, and exchange of information among criminal justice agencies.

The third element, which is particularly prominent in the US, encompasses provisions for *sharing registrant information with the public*. This includes statutory specifications for the range of information that must be made public, as well as the mechanisms and processes through which the information is to be disseminated. In the US, the primary (although certainly not exclusive) mechanisms utilized for this purpose are currently public websites that operate independently from law-enforcement-only databases within each of state, territory, and applicable tribal jurisdiction.

When analyzing SORN policies within the US, a critical distinction should be made between *sex offender registration* (corresponding with the first two elements listed above) and *community notification* (corresponding with the third element). Although often conflated within policy discourse, these two dimensions of SORN policies have followed different policy trajectories and operate under different assumptions about their respective public safety mechanisms.

The primary purpose of *sex offender registration* is to provide criminal justice agencies with reliable and actionable information that may be used to support core law enforcement function, including both criminal investigations and community-based crime prevention. Such policies and practices have existed in the US since the first half of the twentieth century (Logan, 2009), and have been adopted in over thirty countries across the globe (SMART Office, 2016a).

In contrast, *community notification* policies aim to provide members of the public (including prospective employers, youth-serving organizations, families, and others) with knowledge and awareness of specified registrants living within the community. Community notification takes a variety of forms including website information, posted signs, community meetings, and direct mailers with information about registrants. Community notification is a comparatively newer policy strategy, generally dating to the early 1990s, and is used outside of the US on only a limited basis (SMART Office, 2016a).

### A. Evolution of SORN Policies in the United States (Pre-2006)

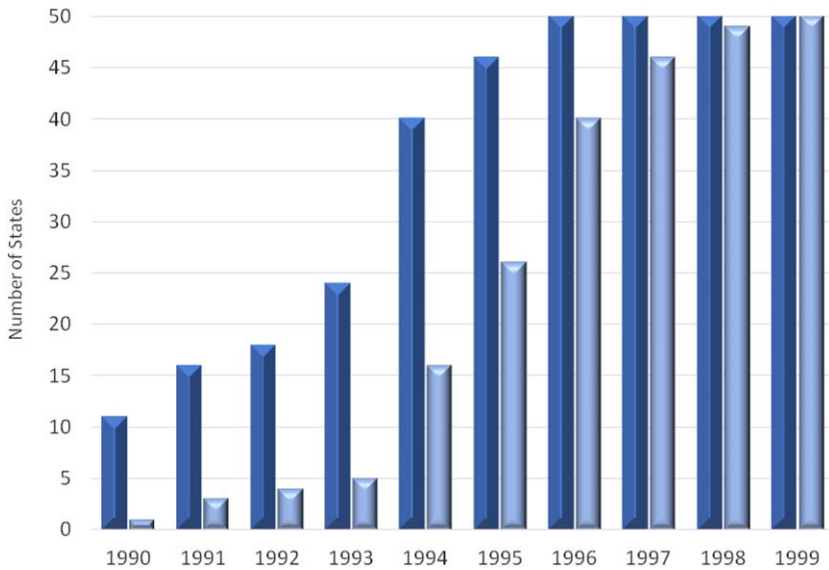
Registration of individuals with sexual offense histories traces its roots to the first half of the twentieth century, beginning with a series of local ordinances enacted in the 1930s and continuing with California's establishment of the first statewide sex offender registry in 1947. Over the following decades, sex offender registries were established in several additional states and localities, although they remained limited in scope and application (Logan, 2009).

Beginning in the early 1990s, state policymakers' interest in sex offender registries expanded amidst concern over the dangers posed by certain high-risk individuals living within communities. Between 1989 and 1994, the number of states with registration policies and systems more than doubled, from twelve to twenty-six states (Logan, 2009). In 1990, Washington's Community Protection Act established the nation's first system for public dissemination of certain registrant information, paving the way for the passage of similar community notification laws in other states.

With the development of state-based SORN systems well underway, 1994 marked the beginning of the US federal government involvement in the SORN policy arena. That year, the US Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as part of the Violent Crime Control and Crime Reduction Act—the most expansive federal crime bill in US history (Wetterling Act, 1994). The Wetterling Act included multiple provisions to protect children from sexual victimization, including a requirement that states establish registries to track and monitor those convicted of offenses against children and other sexually violent offenses. The federal law set forth general baseline standards for registration systems, but left much of the discretion related to operationalizing registries to state governments. The law also established a fiscal mechanism to promote state compliance with the Wetterling Act's provisions, stipulating that non-compliant states would receive a 10 percent reduction on their federal justice assistance block grant (JAG) funding.

Over the ensuing decade, a series of amendments to the Wetterling Act introduced new federal SORN requirements, including measures stipulating community notification and public disclosure requirements (Megan's Law, 1996); requiring lifetime registration for certain registrants and establishing an FBI-operated national database for law enforcement known as the national sex offender registry (Pam Lychner Act, 1996); and establishing

**Figure 1.** Expansion of state sex offender registration (darker bars) and notification policies (lighter bars), 1990–1999. *Source:* Analysis of state statute histories conducted by this study's lead author.



a national web portal integrating information from state public registries (PROTECT Act, 2003).

Figure 1 illustrates the pattern of state-level of adoption of SORN policies throughout the 1990s. These data suggest that the diffusion and expansion of these policies likely stemmed from a convergence of state-led initiatives with federal policy engagement. Regarding the former, the figure illustrates that the initial surge in SORN policy adoption during the first half of the 1990s was largely driven by state efforts, absent any direct federal mandates. Nearly half of the states had established mechanisms for sex offender registration prior to the first federal mandates of the 1994 Wetterling Act, and a similar majority had enacted community notification mechanisms prior to federal Megan's Law in 1996.

These developments notwithstanding, an examination of state-level policy trajectories suggests that federal engagement was indeed instrumental in promoting the nationwide expansion of SORN policies. Notably, state adoption of SORN policies (denoted by the darker bars in the figure) accelerated in the wake of the 1994 Wetterling Act, with registries

established by all fifty states by the end of 1996. Similarly, state policies that provided mechanisms for notifying citizens about certain registrants living in the community (denoted by the lighter bars) surged following the 1996 passage of the federal Megan's Law.

### **B. Sex Offender Registration and Notification Act (SORNA)**

By the end of the 1990s, all fifty states, the principal territories, and the District of Columbia had established both sex offender registries and systems for sharing information with the public. As state-based SORN systems evolved through the mid-2000s, the population of RSOs expanded accordingly, surpassing 500,000 by 2005 (NCMEC, 2005). That year, amidst a number of media reports concerning problems and inconsistencies among the nation's disparate SORN systems (Levenson & Harris, 2011), federal lawmakers focused their attention on several perceived inter-jurisdictional loopholes that could potentially be exploited by RSOs seeking to avoid registration requirements or escape oversight by authorities.

In a series of committee hearings held during 2005 and 2006, members of the US Congress drew particular attention to the diffuse range of rules and practices governing the nation's SORN systems. Although the 1994 Wetterling Act and its amendments had included some general baseline standards, federal law had ceded most decisions concerning the structure, rules, and operations governing SORN policies to the discretion of state legislatures and implementing agencies. Accordingly, over the span of nearly two decades, state SORN systems in the US had evolved to encompass varied approaches to defining the scope of the RSO population, establishing individual registrant requirements (e.g., duration of registration and reporting frequency), enforcing registry compliance, disseminating RSO information to the public, and other dimensions of registry management.

The resulting patchwork of SORN standards and practices across jurisdictions was viewed by federal lawmakers as presenting two primary problems. The first was based on a perception that lax standards in certain states had created "safe havens" for dangerous individuals with sex offense histories, which in turn provided opportunities for such individuals to relocate from states with more stringent requirements to those with less stringent ones. The second was more operational in nature, focusing on the incompatibility of RSO information across jurisdictions (e.g., variation in



state criminal codes and methods for classifying registrants), a factor that complicated the ability for registration requirements to be clearly established when RSOs moved from state to state. Accordingly, federal lawmakers saw a need for common standards and mechanisms to ensure the timely transfer of information related to RSOs who indicate an intention to leave a jurisdiction.

The Sex Offender Registration and Notification Act (SORNA), also known as Title I of the 2006 Adam Walsh Child Protection and Safety Act, set forth a framework for a significantly expanded and defined federal role in shaping and coordinating the nation's disparate SORN systems and envisioning a "comprehensive national system" that would address inter-jurisdictional challenges (Adam Walsh Act, 2006).

Although SORNA's policy prescriptions were broad and multifaceted, the law's most expansive element involved the establishment of detailed federal requirements guiding the management and operation of SORN systems within states and other covered jurisdictions. Intended to improve uniformity and consistency across jurisdictions, these provisions defined specific federal requirements related to the content and management of SORN systems operated by the states, territories, and tribal jurisdictions across the US. The SORNA requirements generally span the following primary areas:

1. **Registerable offenses:** Requirements delineating the circumstances under which a person is required to register as a sex offender, including conviction or delinquency adjudication for specified offenses;
2. **Registration requirements:** Requirements setting forth the minimum conditions of registration for covered individuals, including but not limited to: (a) the length of time for which a person must remain registered; (b) the types of information that the person must provide to registering authorities; (c) timeframes under which a person must report changes to their addresses or other reportable information; (d) the frequency with which the person must routinely report to authorities to verify and update their information; and (e) criteria for removal from the registry;
3. **Enforcement and compliance:** Requirements related to registration enforcement, including minimum criminal penalties for registry noncompliance;
4. **Required data elements:** Requirements setting forth the scope of information that must be: (a) captured and maintained within

- jurisdictional sex offender registration systems; and (b) made available to the public via registry websites; and
5. **Interjurisdictional transfer:** Operational requirements for state registering authorities, including those related to the timely transmittal of information when registrants indicate an intent to travel and/or relocate to other jurisdictions.

SORNA established parameters of the specific requirements within each of these areas, and charged the DOJ with promulgating detailed guidelines. The law established an initial deadline of July 2009 for states to comply with the SORNA guidelines, with the possibility of two one-year extensions, and stipulated that noncompliant states would be subject to the same ten-percent annual reduction in their federal JAG funding as initially established under the Wetterling Act. SORNA also called for establishing a new office within the DOJ, subsequently designated as the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), to develop and oversee implementation of the guidelines and various other provisions of the Adam Walsh Act.

### C. Post-2006 Policy Developments

The DOJ, via the SMART Office, issued draft guidelines in the spring of 2007, and following a period of public comment, issued the final SORNA guidelines in the summer of 2008. The guidelines were grouped into fourteen standard areas, each with specific compliance requirements. The general parameters of the fourteen SORNA standard areas are outlined in Table 1.<sup>2</sup>

In December of 2008, the DOJ's Office of the Inspector General (OIG) issued a report examining progress toward SORNA's implementation, both within the Department and among states and other covered jurisdictions (OIG, 2008). Citing delays in the release of the SORNA standards and the development of mechanisms to support states in their implementation efforts, the OIG report expressed concern over the ability of states, territories, and applicable tribal jurisdictions to fulfill SORNA requirements by the initial statutory deadline of July 2009.

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2. Further details on the guidelines and supplemental guidance may be found at U.S. Department of Justice, SMART Office, "SORNA Current Law: Attorney General Guidelines," <https://smart.gov/guidelines.htm>

**Table 1. Summary of SORNA standard areas.**

<b>Section</b>	<b>Description</b>
<b>I: Immediate transfer of information</b>	When an offender initially registers and/or updates information, it must be immediately sent to other jurisdictions (within three days) where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website. <sup>a</sup>
<b>II: Offenses that must be included in the registry</b>	Jurisdictions must include certain state, federal, military, tribal, and foreign offenses in their registration schemes, both from its jurisdiction and other SORNA jurisdictions.
<b>III: Tiering of offenses</b>	Offenses must be classified based on the nature of the offense of conviction, and established through a baseline or minimum standard by way of a three-tier classification system, although states may use fewer tiers so long as they exceed the minimum requirement.
<b>IV: Required registration information</b>	Jurisdictions must collect certain pieces of information from and for each offender that it registers. Jurisdictions must keep that registration information, in a digitized form, in its registry.
<b>V: Where registration is required</b>	Initial registration is required in the jurisdiction where the sex offender was convicted, in addition to where the offender resides, works, or attends school.
<b>VI: Initial registration: generally</b>	Immediate registration and various duties when initially registering.
<b>VII: Initial registration: retroactive classes of offenders</b>	Each jurisdiction must have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, those who are already registered or subject to a preexisting sex offender registration requirement under the jurisdiction's law, and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime.
<b>VIII: Keeping the registration current</b>	When an offender resides in a jurisdiction, that offender must immediately appear in person to update their name, residence, employment, school attendance, and termination of residence, in addition to updating any changes to certain pieces of information.
<b>IX: Verification/appearance requirements</b>	Offenders must register for a specified duration of time and make in-person appearances at a specified frequency based on the tier of the offense of conviction. SORNA allows for a reduced registration period under certain conditions.

*(continued)*

Table 1. (continued)

<i>Section</i>	<i>Description</i>
<b>X: Registry website requirements</b>	Every jurisdiction must maintain a public sex offender registry website and publish certain registration information, as delineated in the standard.
<b>XI: Community notification</b>	In certain cases, jurisdictions are required to disseminate information about sex offenders to specified agencies and individuals in the community.
<b>XII: Failure to register as a sex offender: state penalty</b>	Jurisdictions are required to provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with registry requirements.
<b>XIII: When a sex offender fails to appear for registration</b>	When a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, the jurisdiction receiving that notice must have systems to inform the originating jurisdiction that the sex offender failed to appear for registration.
<b>XIV: When a jurisdiction has information that a sex offender may have absconded</b>	When a jurisdiction has information that a sex offender may have absconded, the jurisdiction must take certain actions to investigate the absconder and notify various law enforcement agencies.

[a] NCIC, National Crime Information Center. NSOR, National Sex Offender Registry.

In the spring of 2009, with the initial implementation deadline approaching, a letter co-signed by the Chairpersons and ranking minority members of both the Senate and House Judiciary committees asked the Attorney General to exercise his statutory authority to extend the compliance deadline, citing “unforeseen difficulties in implementing the law and significant added costs” (Leahy, Conyers, Specter, & Smith, 2009). The Attorney General issued such an extension order on May 26, 2009 (OAG, 2009), extending the compliance deadline to 2011 through the provision of the two one-year extensions. Over the next two years, despite a surge in state legislative activity aimed at enhancing and refining state SORN policies, states continued to experience challenges and barriers in bringing their systems in line with SORNA requirements, citing an array of operational, legal, and fiscal challenges (Harris & Lobanov-Rostovsky, 2010).

Beginning in 2011, however, state progress toward SORNA implementation accelerated somewhat amid some shifts in federal policy. Supplemental SORNA guidelines issued in 2011 and 2016 included modification

**Figure 2.** SORNA substantial implementation designations.

of requirements pertaining to public websites, international travel, and registration of adjudicated juveniles (OAG, 2011, 2016). Additionally, the SMART Office modified its processes for working with states to facilitate implementation, and adjusted its thresholds for evaluating adherence to SORNA criteria. Recognizing the unique aspects of each jurisdiction's legal and operational landscape, the DOJ and SMART Office shifted from a fairly literal standard (termed "substantial compliance") to a more flexible standard ("substantial implementation") (SMART Office, 2016b). Whereas the "substantial compliance" threshold required states to align *directly and fully* with SORNA guidelines, "substantial implementation" recognized state provisions that "did not substantially disserve" the purpose of each of SORNA's fourteen standard areas (see Table 1). Coupled with this more flexible process, the DOJ also established a mechanism for non-implemented states to recapture the 10-percent JAG "penalty" that would otherwise be held for non-compliance, provided that these funds be utilized for purposes consistent with SORNA's goals. These and other key shifts in DOJ policy contributed to additional states achieving substantial implementation status beginning in 2011, as noted in Figure 2.

Federal policy has continued to evolve in the years since SORNA's passage. Beyond periodic re-authorizations of SORNA, the US Congress has enacted a series of laws designed to further strengthen federal SORNA laws, including the 2008 Keeping the Internet Devoid of Predators Act (KIDS Act, 2008) mandating collection of RSO internet identifiers for law enforcement use; the 2015 Military Sex Offenders Reporting Act, requiring the Department of Defense to submit information on those convicted of a sex offense via court-martial to the National Sex Offender Registry (NSOR) and the National Sex Offender Public Website (NSOPW)

(Military Sex Offenders Reporting Act, 2015); and the 2016 International Megan's Law, which addressed a range of issues related to RSO international travel and required jurisdictions to submit international travel information to the USMS for transmission to destination countries, as well as requiring a passport notation of the RSO's status (International Megan's Law, 2016).

At the state level, the post-SORNA period has been characterized by sustained legislative activity. In the years immediately following SORNA's passage, SORN assumed a prominent place on state legislative agendas, along with issues such as unemployment, transportation, higher education, and health care coverage (NCSL, 2009). States have continued to refine their SORN policies since that time; between 2009 and 2017, states enacted 536 SORN-related bills, an average of sixty legislative bills per year.<sup>3</sup> Along with refinements to state SORN policy, states have collectively experienced a 50-percent increase in the RSO population, from approximately 600,000 in 2006 to over 900,000 in late 2018. This expansion has been fairly consistent, with the number of RSOs increasing at a rate of 20,000 to 25,000 per year.<sup>4</sup>

#### D. Policy-Focused Research on SORNA Implementation

During the formative years of SORNA implementation, a series of studies analyzed state-level implementation of SORNA standards and requirements—two surveys conducted in the year following the 2008 release of the initial SORNA guidelines (Harris & Lobanov-Rostovsky, 2010; NCJIS, 2009), and one conducted in 2013 after nineteen jurisdictions (16 states and 3 territories) had been granted “substantial implementation” status from the DOJ (GAO, 2013).

In the sole peer-reviewed study, Harris and Lobanov-Rostovsky (2010) conducted a survey of state registry officials during the latter part of 2008, in the months following the DOJ release of the SORNA guidelines. The study identified SORNA's retroactivity requirements as the area with the most significant deviation from state policy, with approximately 74 percent

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3. Analysis of data retrieved from NCSL Sex Offender Enactments Database (2018, January), <http://www.ncsl.org/research/civil-and-criminal-justice/sex-offender-enactments-database.aspx>

4. Data based on authors' analysis of data provided by the National Center for Missing and Exploited Children, based on bi-annual counts conducted between 2005 and 2018.

of states reporting that their existing policies were either highly or somewhat inconsistent with this SORNA mandate. This was followed by SORNA requirements related to inclusion of juveniles on the registry (66 percent highly or somewhat inconsistent) and consistency with SORNA's conviction-based classification system (57 percent highly or somewhat inconsistent). Of note, relatively few states indicated that their policies were fully consistent with SORNA's retroactivity and juvenile provisions (17 percent and 11 percent of states, respectively), whereas approximately one third (34 percent) reported having systems that complied fully with SORNA's conviction-based classification requirements.

Legal challenges were prominent in jurisdictions that involved the potential for requiring registration of previously unregistered groups and/or expanding registration requirements, specifically those involving retroactivity, the expansion of covered offenses, juvenile registration, and conviction-based classification. On the operational front, many states cited their lack of information system capacity to adapt to SORNA's retroactivity provisions, particularly those requiring the identification of individuals who re-enter the criminal justice system on a nonsexual offense, but who had previous sexual offense convictions or adjudications. Survey respondents expressed both operational and fiscal concerns related to the demands associated with transitioning from risk-based to conviction-based classification systems, information technology enhancements, and the adaptation of registration update systems and personnel to respond to increased workloads.

Finally, survey respondents cited practical concerns over potential adverse public safety impacts related to both the inclusion of adjudicated juveniles and the requirements for conviction-based classification. Regarding the former, respondents expressed concern that the juvenile registration might compromise the potential for these youth to effectively and safely integrate into society, thereby increasing rather than mitigating risk. As for the latter, respondents in states utilizing standardized and empirically validated risk assessment instruments expressed concern that differentiating registrants based solely on the crime of conviction might compromise the ability to focus law enforcement resources and public attention on the most dangerous individuals. In particular, proponents of a risk-based classification system cited the significant discrepancy that often exists between the charged offense and the ultimate conviction offense (Harris & Lobanov-Rostovsky, 2010).

These findings are consistent with results from analyses conducted by the National Consortium for Justice Information and Statistics (SEARCH) (2009) and the U.S. Government Accountability Office (GAO, 2013). In the SEARCH study, when asked about the most significant impediments to SORNA implementation, the most commonly mentioned items were juvenile registration (23 of 45 responding states), retroactivity (20 states), and conviction-based classification (7 states). Related to the nature of implementation barriers, respondents cited a range of factors including staff resource needs, potential constitutional challenges, operational concerns related to changes in classification systems, and the need for statutory reform (42 states indicated that legislation would be required to bring the state into compliance with SORNA).

The GAO study (2013) examined state-level SORNA implementation and its related challenges. Based on a review of DOJ records, the first part of the analysis considered jurisdiction's adherence to SORNA's implementation standards across thirty-three states and three US territories that had submitted substantial implementation packages to the SMART Office, including sixteen states and three territories that had been granted "substantial implementation" status by DOJ, and seventeen states that had not yet received this designation.<sup>5</sup> Among the sixteen substantially implemented (SI) states, most were found to deviate from the "letter of the law" regarding specific SORNA guidelines, with all but one (Kansas) deviating from at least three of the fourteen standards. In reviewing the seventeen states that had not substantially implemented SORNA (NSI states), the GAO analysis determined that fifteen of these states met criteria for implementing at least half of the fourteen standards, and that eleven of these states met criteria for at least ten of the standards. Within NSI states, the most significant impediments to implementation related to public registry website requirements, the range of covered offenses, and frequency and/or duration of verification and appearance.

The GAO analysis also included a survey of state-level officials in non-implemented jurisdictions evaluating the specific impediments to SORNA implementation. The results from this survey were generally consistent with the two prior studies (Harris & Lobanov-Rostovsky, 2010; NCJIS,

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5. These seventeen states included two that were subsequently designated as "substantially implemented": Colorado, which received the designation shortly after the report's release, and Oklahoma, which received the designation in early 2017.



2009): of the six highest ranked implementation challenges, three of these (reconciling conflicts between state laws and SORNA, generating political will to implement necessary changes, and covering the costs of SORNA implementation) corresponded to the general obstacles identified by Harris and Lobanov-Rostovsky (2010), and the remaining three corresponded with the specific SORNA “problem areas” flagged by both earlier surveys (i.e., retroactivity, conviction-based classification, and juvenile registration).

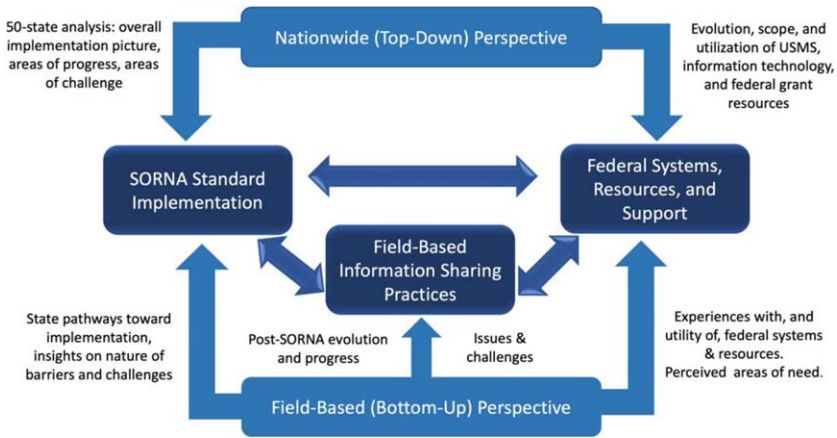
Supplementing its survey and review of state implementation of SORNA standards, the GAO review also conducted a series of interviews with criminal justice system stakeholders in five of the states that had implemented SORNA. These interviews identified both positive and negative developments associated with SORNA implementation. Positive developments cited by interview participants included improvements in information sharing within and across jurisdictions, collaboration among law enforcement agencies, and capacity to enforce registration compliance. Among the negative sentiments expressed in the interviews, participants voiced doubt that SORNA’s “conviction-based” classification system was a good indicator of risk, concern over increased workloads due to expanded registration requirements, and concern over registrants’ ability to reintegrate into the community.

### E. Nationwide Study of SORNA Implementation

It was in this context that, in 2015, the US Department of Justice, via the National Institute of Justice, entered into a cooperative agreement with the University of Massachusetts Lowell to conduct a comprehensive nationwide study examining the progress that has been made toward SORNA’s goals as envisioned in 2006 (Harris, Kras, & Lobanov-Rostovsky, 2020). As its primary purpose, the project aimed to provide data and insights that can both inform the continued refinement of federal and state policies, as well as improve the public safety effectiveness of the nation’s SORN systems. The full study, of which the current analysis is a component element, focused on three primary dimensions of SORNA and its implementation:

1. **State implementation of SORNA standards**, including both aggregate levels of progress across the various standard areas and state experiences surrounding implementation of SORNA standards;
2. **The scope and nature of information-sharing practices within the states**, including the evolution of these practices since SORNA’s

**Figure 3.** Evaluative framework of the full study.



passage, relationships to SORNA standards, emergent issues and challenges, and model practices; and

3. **The impact of federal investments made pursuant to SORNA**, including those related to the role of the USMS, state uses of SORNA federal grant funds, and the role of federal information systems in improving the interjurisdictional exchange of information, supporting compliance-related investigations and enforcement, and enhancing public access to sex offender information.

The project’s overall evaluative framework is summarized in Figure 3.

The three domains, and the interactions between them, were examined through a mixed-methods approach that included both “top-down” and “bottom-up” elements. The top-down portions of the analysis aimed to offer a nationwide view of SORNA implementation by exploring the contours and efficacy of federal systems, resources, and modes of support deployed in pursuit of SORNA’s goals. The bottom-up portions of the analysis aimed to offer a field-based perspective, encompassing state and local implementer experiences with, and perspectives on, the identified domains of interest.

### 1. Phase One Analysis of SORNA Implementation

In the first phase of the analysis, the research team undertook a systematic review of state adherence to SORNA standards across the fifty

states.<sup>6</sup> The analysis was based on detailed “compliance letters” issued by the SMART Office following its review of implementation packets submitted by state agencies between 2009 and 2017. Each letter included an assessment of the consistency between the state’s laws and policies and the fourteen SORNA standards, along with the SMART Office determination as to whether, and to what extent, each standard had been met.

The findings from this analysis suggest that, although the distinction between SI states and NSI states has some degree of relevance, sole focus on these binary categories obscures much of the progress states have made toward bringing their systems into closer alignment with SORNA’s goals. Based on an analysis of 692 individual standard determinations made by the DOJ pursuant to its reviews of state policies,<sup>7</sup> the findings indicated that:

- Approximately 77 percent (530 of the 692 standard determinations) were found to meet SORNA SI thresholds—a figure that has likely increased as states have continued making adjustments in the years following the implementation reviews.
- Thresholds for most SORNA standards are met by a majority of states. For thirteen of the fourteen SORNA standard areas, at least half the states were determined to have met implementation thresholds, and for nine of the standard areas, at least 75 percent of states were found to have met these thresholds.
- Most states meet thresholds for a majority of standards: 92 percent of states were found to have met implementation thresholds for at least half of the fourteen SORNA standard areas, and more than two-thirds of states were found to meet thresholds for ten or more standards.

Overall, this analysis indicated that, regardless of binary SI designations, states have made substantive adjustments to their SORN policies that have brought the nation’s disparate SORN systems into closer alignment. Collectively, the study found that state policy changes have: (1) produced greater consistency in the data elements contained within state SORN systems; (2)

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6. Initial findings from this analysis, including data from 49 states that had been issued SMART letters as of 2016, were reported in Harris et al. (2017). The data summarized here represent the updates final results comprising data from all fifty states, as reported in Harris et al. (2020).

7. The DOJ evaluated 48 states on all fourteen standards, and two states on fewer than fourteen standards due to missing information. Further details are available in Harris et al. (2020).

expanded the scope of registrant information to encompasses more activities and locations; (3) standardized many registration requirements, including those related to timeframes for updating information, verification frequency, duration of registration, and penalties for non-compliance; and (4) expanded the range of public registry website information.

## 2. Phase Two Analysis: The Current Study

Findings from the nationwide analysis, coupled with the previously described body of research on SORNA implementation, have offered useful aggregate-level insights concerning the barriers to SORNA implementation. These analyses are limited, however, in their ability to capture the depth of state experiences with SORNA implementation. Specifically missing from these findings are the rich descriptions from state-based policy implementers that can present insights concerning the “back stories” of states’ SORNA implementation experiences, elucidate the persistent barriers that have prevented states from implementing certain standards, and offer insights that can guide adjustments to federal policy.

To address this gap in scholarship, the current analysis offers an in-depth perspective on state experiences with SORNA implementation, through a series of ten state-based case studies. Five of these case studies focused on states that had received SORNA SI designations from the DOJ (Alabama, Florida, Michigan, Missouri, and Pennsylvania), and five focused on states that had not (California, Iowa, New Mexico, Texas, and Washington). The case study protocol, which included interviews with key personnel and analysis of supplementary data provided by agency officials, was designed to offer insights surrounding state experiences with implementing SORNA standards, the scope and evolution of state SORN systems and information-sharing practices since SORNA’s enactment, and state and local experiences with federal systems and mechanisms of support.

## II. METHODOLOGY

### A. State Selection

States were selected for participation in the case studies through a purposive sampling method (Creswell & Poth, 2016). To ensure representation from a diverse cross-section of states, the research team developed a matrix that

arrayed states in accordance with several salient dimensions, including current SORNA implementation status, the size and scope of the registry systems, geography, registry information system platforms, and methods of registrant classification. The research team generated a short list of fifteen states for preliminary outreach, of which ten were selected for final inclusion in the study in consultation with SMART Office senior policy advisors.<sup>8</sup>

The final sample of states included five that had received SI designations and five that had not received such designations. It included four of the nation's largest registry systems, with between 43,000 and 106,000 registrants (California, Florida, Texas, and Michigan); four midsize systems, with between 15,000 and 21,000 registrants (Alabama, Washington, Missouri, and Pennsylvania); and two states operating smaller systems, with between 3,000 and 6,000 registrants (Iowa and New Mexico).

Consistent with nationwide patterns, the majority of states within our sample utilized mechanisms for establishing registration requirements that relied primarily or exclusively on offense-based criteria. One state in the sample (Washington) utilizes a "blended" system in which certain requirements are based on conviction and others are based on structured risk assessment of criteria beyond the conviction offense. Another state in the sample (California) had recently passed legislation that will involve the use of structured risk assessments for certain registration requirements, including relief from registration. A third state (Texas) utilizes risk assessment for purposes of certain registry functions (such as informing compliance enforcement efforts), although bases an individual's duty to register on offense-based criteria.

## B. Site Visit Process and Protocol

Case study site visits occurred in two phases, with the first round conducted between January and June of 2017, and the second round between June and October of 2018. Visits typically spanned two days, with most of this time dedicated to interviews with a range of personnel connected to the management and operation of the state's SORN system, SORN-related law and policy, registry enforcement, and other key functions. In most

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8. Further details surrounding the case selection process, interview sample, site visit data collection methodology, and analytic processes are available in the full project technical report (Harris et al., 2020).

cases, site visits began and concluded with the state's SORNA point of contact and registry managers. These interactions included an opening meeting focused on discussing the goals of the site visit process and a final debriefing interview that provided the research team with the opportunity to seek any needed clarifications and gather additional contextual information related to matters arising during the course of the visit.

Beyond the interviews, other site visit activities included tours of registration units, reviews of documentation and work processes, and demonstrations of the registration systems and their underlying functionality. In some instances, state registry officials offered formal presentations covering issues such as legislative history, system operations, legal developments, and other matters related to the scope and nature of their respective registration and notification systems. In conjunction with the site visits, the research team collected and analyzed a range of ancillary data provided by state registry agencies, including legislative materials, case law, operational policies, registration caseload and activity reports, and cost data.

### C. Interview Sample

Across the ten states, the research team interviewed 152 stakeholders representing a wide range of registry-related managerial and staff roles. The composition of the interview pool within each state varied, but generally included meetings with management (including the state's primary SORNA point of contact), unit supervisors, and both sworn and civilian staff. The interview sample reflected multiple levels of government (federal, state, county, and local), a range of agency types (state public safety/bureau of investigation agencies, law enforcement, corrections, prosecutors, probation, and parole), and varied functions related to registration (e.g., registry management, analytic services, technical system support, compliance enforcement, investigations, and legal counsel).

### D. Interview Process

Most interviews were held in small groups of between two and five participants, with some held on an individual basis. Most commonly, interview participants were convened in a central location by the state SORNA point of contact, although in some cases, the research team conducted interviews at alternative locations such as local registration units. Prior to each interview session, the research team provided a verbal summary of the project

and its goals, and reviewed consent forms approved through the University of Massachusetts Lowell Institutional Review Board (IRB). Participants were provided with assurances of confidentiality that specific perspectives would not to be attributed to any particular individual, and were given a detailed description of how data would be protected. Interviews were guided by a comprehensive IRB-approved protocol, which was adapted for each interview based on the nature of participant roles and responsibilities. The interview guide included prompts exploring the functioning of each unit; registration, verification, and compliance enforcement processes; interfaces with federal systems; and changes to the system and registry function since the passage of SORNA.

### **E. Analysis of Interview Data**

Once field notes were cleaned and edited for clarity, researchers de-identified all people and places by establishing pseudonyms and a unique identifier for each participant. The interview notes were then imported into NVivo 12 for coding and analysis. The research team utilized a multistage, iterative approach to coding, analysis, and synthesis of the data. This process relied on a thematic approach that drew upon both deductive (based on pre-established themes aligned with the study's interview protocol), as well as inductive strategies to identify emergent themes within the data (Braun & Clarke, 2006). The inductive analysis allowed researchers to consider and account for actions, meanings, and sentiments of participants that were not identified in the initial coding scheme (Braun & Clarke, 2006; Charmaz, 2006). At various stages throughout the coding process, the entire research team conducted a series of working sessions to review the emergent themes, triangulate these findings with the broader contextual items gathered through the nationwide assessment, identify and reconcile discrepancies within the data, and develop an emergent typology about the patterns and processes comprising each state's path toward SORNA implementation.

## **III. FINDINGS**

As part of each state case study, the research team traced the evolution of the state's SORN system from passage of its first registration policy. Adopting this longitudinal view, the analysis not only captured the policy

developments since SORNA, but also produced an understanding of each state's policy "baseline" as it existed before SORNA's passage. Through interviews with key stakeholders and the review of supplemental documentation provided by state registry agencies, the research team chronicled legislative milestones, major legal challenges and court rulings, changes in administrative policies and systems, and seminal external events affecting the course of state policy.

Examining pre-SORNA conditions in tandem with post-SORNA developments across the ten states, analysis revealed that "SORNA implementation" is far from a singular experience. Some substantially implemented (SI) states were able to achieve that designation through limited and/or incremental policy adjustments, whereas other SI states required major realignments of their policies and systems. Similarly, among the not substantially implemented (NSI) states, we found some with pre-SORNA policies and practices that were mostly consistent with SORNA's general framework, and others that were deeply invested in systems that diverge from SORNA in some fundamental ways.

This general observation gave rise to a construct that the research team termed "distance to travel." This construct is conceptualized as the incremental difference, in both breadth and depth, between a state's pre-SORNA condition (e.g., policies, systems, rules, etc.) and SORNA's underlying framework. Viewed in tandem with the binary categorization reflecting SI/NSI status, this construct establishes a framework for considering the characteristics of state experiences with SORNA implementation, as reflected in Figure 4 below.<sup>9</sup> In this typology, the horizontal axis represents binary SORNA implementation status (SI or NSI) as determined by the SMART Office review, and the vertical axis represents the pre-SORNA to SORNA implementation distance to travel.

Generally, states' journeys toward SORNA implementation in the lower two quadrants of the model can be viewed as processes of modest incremental adjustments to statutes and operational practices, whereas the pathways for states in the upper two quadrants have entailed more significant realignment of their pre-SORNA policies and practices. Below, we consider each of the quadrants in turn, examining the various histories, processes, features of,

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9. Although both SORNA implementation and "distance to travel" are best thought of as dynamic and gradated constructs, they are presented here in binary form for purposes of clarity and illustration.



**Figure 4.** Typology of SORNA implementation journeys.

		SORNA SUBSTANTIAL IMPLEMENTATION	
		Implemented	Not Implemented
DISTANCE TO TRAVEL	Further	Michigan Pennsylvania	California Texas Washington
	Shorter	Alabama Florida Missouri	Iowa New Mexico

and experiences with SORNA implementation, highlighting stakeholder perspectives on the nature of the implementation process and its associated challenges.

#### A. Quadrant 1: Substantially Implemented with a Shorter Distance to Travel

The first group of states, Florida, Alabama, and Missouri (represented in the lower left quadrant), operated pre-SORNA policies that may be viewed as generally consistent with SORNA's overall framework, and therefore has a relatively shorter distance to travel than other states in the sample. Notably, policies in these three states have historically applied a fairly uniform set of requirements on RSOs, with most registrants subject to lifetime registration and many other provisions that go beyond SORNA requirements. Despite variation in the nature and extent of their post-SORNA policy adjustments, these states were able to achieve the required statutory changes with incremental adjustments and few political hurdles. Additionally, with some limited exceptions, these states have also been able to implement most of these policy changes without encountering significant legal and operational obstacles.

##### 1. Florida

Florida's SORNA system was established in 1993, and since that time has undergone a nearly continuous evolution amidst sustained legislative attention. In the years leading up to SORNA, the state had adopted a range of changes to its system, expanding the scope of its registrant population,

requirements and restrictions associated with registration, and compliance enforcement capacity. Each of these adjustments moved Florida closer to what would be mandated by SORNA.

Following SORNA's passage, the Florida legislature adopted a series of policy adjustments in 2007 and 2009 to bring the state into closer alignment with specific SORNA provisions. The most prominent revision was to the state's juvenile registration requirements, which were amended in 2007 to include certain adjudicated juveniles as specified by SORNA. Prior to this change, only juveniles convicted as adults were included in the state registry system. Other adjustments, described by state officials as "glitch issues," included expanding requirements to collect email addresses, internet identifiers, and phone numbers; adjustments to some mandatory timeframes for updating information; and the development of automatic public notification mechanisms.

When asked about the state's experience with SORNA implementation, case study participants in Florida indicated that they had worked closely with Congressional sponsors during the initial drafting of the federal bill, and that they viewed their state's system as a model for many of SORNA's key elements.<sup>10</sup> As such, they described the pathway toward implementation as a straightforward process focused on a limited number of practical issues. Implementation challenges described by state officials were primarily operational (rather than statutory) in nature, and linked to information system modifications required to accommodate SORNA's expanded informational requirements. Specific transitional challenges included address and mapping errors, duplicate entries, and various time-consuming manual processes to ensure accuracy in the registry, such as documenting older cases (e.g., from the 1980s), comparing the registry to vital statistics such as offender deaths, and waiting for necessary documents before offenders can be listed on the public website. In response to these and similar operational challenges, the state is nearing completion of a re-design of the database to be rolled out in 2020.

## 2. Alabama

Alabama's registration system was initiated in 1967 and substantially revised in 1996 and 1999. Since its inception, the state's system has operated on

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10. Of note, Representative Mark Foley of Florida was the lead House of Representatives sponsor of the bill that became SORNA.

a single-tier basis that requires lifetime registration for all but a very limited group of registrants. In its 2011 legislative session, the state passed the Alabama Sex Offender Registration and Community Notification Act, which made a series of adjustments to state policy designed to address a range of SORNA requirements. Among the provisions of this legislation, the state increased registration and verification requirements to quarterly for certain adults, increased juvenile registration from ten years to lifetime for certain offenses, enacted registration requirements for homeless offenders, and captured additional offenses as required by SORNA (Alabama Sex Offender Registration and Community Notification Act, 2011).

Generally, Alabama's statutes and system provisions pre-SORNA have easily aligned with and often exceeded the minimum requirements of SORNA given the state's broadly applied lifetime registration rule. Although the system operates in a decentralized fashion, in which local authorities maintain data entry and compliance enforcement independently, the state registry unit maintains general oversight of registration information, while the legislature and other government offices, like the Office of Prosecution Services, have established and refined policies and processes aimed at maintaining a clear registration statute and protocol.

State registry officials and local law enforcement agree that there is some duplication in the system that has produced workload challenges and sacrificed efficiency. Specifically, the state requires dual registration, where an individual with a duty to register must initiate and verify information separately both in the county of residence and with the state. The counties operate individual, vendor-based data systems, but the state duplicates this effort in a homegrown data system. To further comply with SORNA requirements, Alabama increased the number of information fields to include internet and digital identifiers and multiple residences. According to one local law enforcement official, as "everything became multiplied," this increased the workload at the local and state levels, as well as the registration responsibilities for the RSO.

### 3. Missouri

Missouri established its sex offender registry in 1995 and amended its laws and policies multiple times leading up to 2006. At the time of SORNA's

passage, the state maintained a system that required lifetime registration for most registrants, similar to the previously described systems in Florida and Alabama. In 2008, the state passed Senate Bill 714 in an effort to bring the state system into closer alignment with SORNA requirements. Among its provisions, the legislation expanded the scope of offenses requiring registration, mandated the collection of online identifiers, increased the range of information to be made available on the public website, and added juveniles adjudicated for certain offenses to be included on the registry.

In 2018, the legislature passed a bill moving registration from lifetime duration for most registrants to a three-tier system generally aligned with the SORNA framework. Tier I is a fifteen-year registration with an annual verification, Tier II is twenty-five-year registration with biannual verification, and Tier III is lifetime registration with verification every ninety days. The new classification system “downwardly classified” (i.e., reduced duration of registration) approximately 20 percent of the registrant population—a situation that stands in contrast with other states (such as Michigan, described below), in which adoption of the SORNA tiering system has typically produced a significant level of upward classifications. This legislation also afforded a process for removal from the registry, which is consistent with SORNA standards.

According to interview participants, implementing SORNA was made easier through SORNA federal grant funding to hire more staff, and acquire or update technology to improve information system capacity. One improvement made post-SORNA was real-time information entry where registrations are entered and updated at the local level and verified in real-time by the registry unit.

Although Missouri has traveled a shorter path to SI status than many other states, it has faced numerous legal challenges in the years since SORNA’s passage related to certain aspects of its registration law, predominantly focused on the law’s retroactivity provisions. A series of rulings by the Missouri Supreme Court between 2006 and 2013 has placed parameters around the state’s ability to require registration of certain individuals whose offenses predated the passage of applicable laws. Such rulings have been common across many states, including those that have achieved SI status, leading to a complex implementation pattern in which certain registrants within a state are subject to different requirements depending upon the date of original conviction.

## B. Quadrant 2: Not Substantially Implemented with a Shorter Distance to Travel

Despite their status as NSI states, case study participants in Iowa and New Mexico viewed their systems and policies as generally consistent with SORNA's underlying framework. Both states established their SORN systems following the passage of the initial federal mandates set forth in the 1994 Wetterling Act, and have met most of SORNA's requirements, with remaining barriers to implementation confined to a limited group of issues.

### 1. Iowa

Iowa's sex offender registry was established in 1995 and was initially designed as a dual-tier system with two conviction-based categories of registrants. Those with first-time convictions on non-aggravated sexual offenses in Iowa or within another jurisdiction were subject to registration for ten years. Those with convictions on aggravated offenses and/or two or more convictions on any registerable offenses were subject to lifetime registration.

In 2009, the Iowa legislature passed a series of revisions to its registration policies to bring the system into closer alignment with SORNA. The state maintained its dual designation (ten-year and lifetime) for purposes of duration of registration, but utilized the SORNA-based three-tier framework to establish frequency of verification and which registrant classifications would have information made public. This new system required annual verification for Tier I registrants, biannual for Tier II registrants, and quarterly verification for Tier III registrants. The 2009 revisions also increased the scope of required information, enhanced penalties for non-compliance, and updated categories of registerable offenses. In the 2009 revisions, the Iowa legislature also set forth a series of provisions for registrants to petition for relief from registration requirements. Specifically, the law allowed registrants to petition for removal from the registry after a specified period of time, depending on the offense and based on a risk assessment. Tier I registrants were allowed to file after two years, while Tier II and Tier III registrants were allowed to file a petition after five years on the registry.

Based on a 2013 SMART Office review, the SMART Office determined that Iowa had met or had provisions that did not disserve thirteen of the fourteen standards, with the sole exception being Standard IX, governing

verification and appearance requirements. This latter determination was based primarily on the statutory provisions permitting registrants to petition for relief from registration earlier than allowable by SORNA.

When asked about the reasons why this remaining element has not been addressed, registry officials cited lack of political will within the state legislature. Although the Division of Criminal Investigations, which houses the registry, has submitted legislation to amend the relief from the registry provision for certain registrants, these efforts have failed to gain legislative approval. Participants indicated that, although some legislators favor full SORNA implementation, certain legislative constituencies view the relief from registration provisions as a necessary “safety valve” to ensure a path for those who no longer pose a public safety risk. Given this issue, coupled with what participants cited as a general resistance among Iowans to federal government oversight, it was viewed that altering this legislation was unlikely.

## 2. New Mexico

New Mexico established its sex offender registration system in 1995, pursuant to federal mandates set forth in the 1994 Wetterling Act. This initial system established two tiers of registrants, one required to register for ten years and the other required to register for twenty years. State officials in New Mexico characterized this early iteration of the registry system as fairly limited in scope, covering only a subset of individuals. Between 1999 and 2003, the state passed a series of amendments expanding the scope of registerable offenses, providing for public access to information consistent with the federal Megan’s Law, and increasing the scope of registry information. In 2005, the state passed legislation revising its classification designations from ten- and twenty-year registration periods to ten-year and lifetime registration periods, respectively. Whereas the prior system required annual updates for all registrants, the new system established a requirement that those in the lifetime registration category update their registration every ninety days. Due to legal constraints on the retroactive application of this revised system, the 2005 law established two groups of registrants. Those whose convictions predated 2005 were essentially “grandfathered” into the old classification system, and those convicted after 2005 were subject to the new system. Similarly, additional revisions to the law in 2013 that established semi-annual updates for ten-year registrants

established a third grouping of registrants, encompassing those convicted after the 2013 modifications.

Following an initial SMART Office review of New Mexico's substantial implementation packet in 2011, the state legislature passed another series of modifications in 2013 that brought the state closer to SORNA implementation. In a review conducted later that year, the SMART Office determined that New Mexico met or did not disserve requirements for twelve of the fourteen standards.

Regarding the two points of divergence from the standards, New Mexico has not met the SORNA requirements concerning offenses that must be included on the registry (Standard II), based primarily on the state's provisions for registering adjudicated juveniles, which is based on judicial discretion rather than statutory mandate; and has not met the requirements pertaining to public registry website information (Standard X), due to the exclusion of certain employment information and exclusion of individuals convicted of certain offenses, including kidnapping, false imprisonment, and incest.

When asked about the specific impediments to implementing these final standards, state agency officials indicated the primary barriers involved ongoing resistance to federal oversight among some state legislators who believe that the existing SORN system is "already too draconian." In particular, participants suggested that legislators' position on juvenile registration provisions is firm and is unlikely to be changed. Further, participants reported that attempts to add offenses or provisions to the sex offense statutes has been met with increased scrutiny by the legislature. Policy-makers and stakeholders were attuned to the concerns over publicly posting employment information, which might stigmatize business owners, or offenses for which a victim might be identified due to its nature (such as incest).

### **C. Quadrant 3: Substantially Implemented with a Further Distance to Travel**

The two states in this quadrant, Michigan and Pennsylvania, reached SI designations by enacting legislation that was closely modeled on SORNA standards. In both instances, these changes marked a substantial shift from their pre-SORNA systems, resulting in a further distance to travel to implementation than Florida, Alabama, and Missouri. In broadly

adopting the SORNA framework, these states significantly expanded the number of registrants subject to lifetime registration, as well as the range of registrant requirements and responsibilities. In turn, both states have experienced significant legal and operational challenges as they have set about attempting to implement their policy changes.

### 1. Michigan

Michigan established its sex offender registry in 1994 with the Michigan Sex Offenders Registration Act (SORA). SORA specified qualifying sexual offenses, required those convicted of qualifying offenses to register their addresses with local law enforcement agencies, and designated the Michigan State Police as the official custodian of the registry system. In 1996, the state enacted provisions for the release of certain information to the public, consistent with the requirements set forth in the federal Megan's Law. SORA was further amended several times over the next decade, with provisions expanding the scope of qualifying offenses, enhancing certain registration requirements, increasing penalties for noncompliance, and broadening the range of information on the public registries. Along with enhancements to the SORN system, a series of amendments adopted in 2005 established new restrictions applied to the registrant population, including the establishment of exclusionary anti-loitering zones and state-wide residence restrictions.

In 2011, the state passed a series of amendments designed specifically to more closely align Michigan with SORNA standards. Among these amendments, the state expanded the range of registerable offenses; adopted a three-tier system aligned with the SORNA framework, including an expansion of offenses requiring lifetime registration; expanded the scope of "reportable events" (e.g., changes in address, internet identifiers, employment, and travel); adjusted the timeframes for reporting and updating information, in accordance with SORNA requirements; and expanded the range of information to be made available on the public registry website.

Following enactment of these changes, the Michigan State Police undertook an extensive effort to reclassify over 40,000 existing registrants. Although the 2011 amendments reduced registration duration for a limited group of individuals, the primary outcome of this reclassification process was a sizable expansion in the number and proportion of registrants subject



to lifetime registration, which grew from 11,313 (27 percent of RSOs) to 28,680 (72 percent of RSOs).<sup>11</sup> Coupled with the retroactive provisions established within the legislation, and with the substantial expansion of requirements and restrictions connected to the 2005 and 2011 amendments, these developments entailed a significant broadening of the scope and impact of registration on a sizable group of registrants.

One element of Michigan's journey toward SORNA implementation has been its significant legal challenges. Most recently, a group of six registrants, who had been designated as lifetime registrants under the new system, filed suit against the state, claiming violation of ex post facto and due process. In 2016, following review of a District Court decision, the U.S. Sixth Circuit Court of Appeals issued a ruling in favor of the plaintiffs, determining that the 2005 and 2011 amendments to Michigan's SORA had established a policy that was punitive in its orientation, and that, as such, represented an abridgment of the plaintiffs' constitutional rights (*Does v. Snyder*, 2016). The ruling drew a contrast between the Michigan law and prior registration schemes that had been upheld by the U.S. Supreme Court (*Smith v. Doe*, 2003), suggesting that the Michigan law crossed the line from being a regulatory scheme to a form of punishment, stating:

We conclude that Michigan's SORA imposes punishment. . . . As the founders rightly perceived, as dangerous as it may be not to punish someone, it is far more dangerous to permit the government under guise of civil regulation to punish people without prior notice. (*Does v. Snyder*, 2016)

Although the initial Sixth Circuit ruling applied only to the named plaintiffs, a class action suit was subsequently filed in the Eastern District of Michigan to expand the scope to a broader class of registrants. In February 2020, the U.S. District Court issued its ruling in the case, rendering SORA's provisions unenforceable for registrants whose qualifying offenses occurred prior to enactment of the 2011 amendments.<sup>12</sup>

Beyond these federal rulings, the Michigan Attorney General has raised a range of concerns surrounding both SORA's underlying constitutionality and the public safety utility and efficacy of the state's system, stating:

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11. Joint Statement of Facts, *Does v. Snyder*, Eastern District of Michigan. File No. 2:12-cv-11194 (2014).

12. *Does v. Snyder*, Eastern District of Michigan. File No. 2:16-cv-13137 ECF No. 84, 2/14/20.

As the registry's size has swelled without any commensurate focus on a registrant's level of dangerousness, it has simultaneously become more difficult for law enforcement officers to know which offenders to focus their efforts on. (The sheer size also makes it more difficult for the public to discern which individuals present a danger). Thus, it has become a far less effective tool in keeping the community safe.<sup>13</sup>

Along with the legal challenges, the 2011 changes to the Michigan SORN system have produced a range of operational and resource challenges as well. Interviews with state agency personnel indicated substantial challenges related to the deployment of information systems that promised to accommodate the expanded transaction volume and broadened range of new data requirements, yet under-delivered, presenting data integrity and continuity challenges. Additionally, interview participants cited expanded administrative workloads associated with the reclassification process and the increased number of daily system transactions, as well as growing demands associated with field-based compliance efforts. For example, during the site visit to Michigan, one participant stated, "When AWA [Adam Walsh Act] first took effect, it was like a tidal wave." Several participants echoed these concerns about the system's ability to handle the projected growth in the population, given the expanded number of lifetime registrants.

## 2. Pennsylvania

Since its establishment in 1995, Pennsylvania's SORN policy has been through multiple iterations, many in response to successful legal challenges to legislation. The system was first established via Pennsylvania's original Megan's Law, passed in 1995 and effective in the spring of 1996. This initial statute applied to only a limited number of individuals designated as "sexually violent predators," and required a ten-year period of registration. In 1999, the Pennsylvania Supreme Court determined that the law was in violation of the state constitution based on insufficient due process provisions for establishing whether an individual qualified as a "sexually violent predator" (*Commonwealth v. Williams*, 1999, 557 Pa. 285, 733 A.2d 593).

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13. Brief for Michigan Attorney General Dana Nessel as Amicus Curiae, filed February 8, 2019 (*People v. Betts*, 2019).

In May of 2000, in an effort to address the concerns raised by the Court, the Pennsylvania legislature passed a second version of Megan's Law establishing a two-tiered system involving ten-year registration for most individuals and lifetime registration for those designated as "sexually violent predators." This law also created the Sex Offender Assessment Board, which was tasked with establishing criteria and processes to designate individuals as "sexually violent predators." Over the next decade, the legislature adopted a series of enhancements to the SORN system, including posting of information to the public registry website, expanding penalties for failure to register, and clarifying responsibilities of state and local law enforcement when registrants move between municipalities.

In 2011, the legislature replaced Megan's Law again with the Pennsylvania Sex Offender Registration and Notification Act (PA SORNA). This legislation was primarily intended to bring the state into compliance with the federal SORNA standards, including the registration of adjudicated juveniles, expansion of covered offenses, and adoption of a three-tier system aligned with general SORNA requirements. Following the effective date of the new legislative changes, Pennsylvania submitted an implementation packet for SMART Office review in July 2012. Based on this review, the SMART Office determined that the state met or did not disserve all fourteen SORNA standards, and granted a substantial implementation designation.

Soon after the effective date of these changes, however, the state began to encounter operational and legal challenges associated with implementing the new law. On the operational front, stakeholders reported particular challenges with the re-tiering of registrants and the application of the retroactivity provisions of the new law—a process that expanded the system from approximately 12,000 to 20,000 registrants, and took nearly two years to complete. Additional operational challenges were cited surrounding ambiguity in organizational roles and the resource burden placed on probation and parole agencies who were tasked with registration activities, and the inadequacy of resources to support transitions to a new registry data platform.

Along with the operational hurdles, the state encountered a series of additional legal challenges, which have resulted in Pennsylvania Supreme Court rulings finding that the requirements set forth in Pennsylvania's SORNA guidelines were inconsistent with the state constitution. In the first case, *A.S. v. Pennsylvania State Police* (2016, Supreme Court of

Pennsylvania Middle District, Case No. J-36-2016), a group of individuals assigned to lifetime registration under the new tiering structure challenged their classification assignments, resulting in a requirement that the state undertake a comprehensive review of its reclassification system and criteria. In a second ruling, *Commonwealth v. Muniz* (164 A.3d 1189), the court ruled against the retroactive application of SORNA to those whose qualifying offenses preceded the date of the act. Another ruling, *Commonwealth v. Butler* (2017 WL3882445) in Pennsylvania Superior Court, identified due process issues associated with the state's method of conducting "sexually violent predator" determinations.

In response to these rulings, the state was required to reclassify a significant number of individuals out of their SORNA tiers, and into their "legacy" tiers corresponding to the date of their offense. As a result of this reclassification, approximately 25 percent of current registrants as of 2018 were placed within the SORNA tiering framework, with the remaining 75 percent of registrants placed in categories that were in effect at the time of their offense. These legally imposed constraints, in turn, present significant operational challenges related to establishing and keeping track of several subclasses of registrants for whom different rules apply, and who were distinguished solely by variation in the dates of their conviction offenses.<sup>14</sup>

In 2018, the state's lawmakers once again considered legislation in response to the constitutional issues raised by state court rulings. Among these changes, the state extended provisions governing the conditions under which a person may petition for relief from registration—provisions that went beyond the demands of the courts. Upon review of these changes, the SMART Office determined that the relief from registration provisions was inconsistent with SORNA requirements, and subsequently rescinded Pennsylvania's substantial implementation designation.

#### **D. Quadrant 4: Not Substantially Implemented with a Further Distance to Travel**

The model's fourth quadrant represents those states within our sample—California, Texas, and Washington—that have been designated as not

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14. Of note, this problem is not to unique to Pennsylvania. Several states, including New Mexico and Missouri, have been required to grapple with these types of operational system challenges due to legal precedents surrounding retroactive application of registry requirements.

substantially implemented (NSI), and for which achieving such a designation would require fundamental changes in one or more core aspects of their SORN policies and systems. Although facing different barriers to SORNA implementation, these three states share key characteristics.

First, all three states operate sex offender registration systems that pre-date federal mandates set forth in the 1994 Wetterling Act. Two of these states are SORN pioneers: California passed the nation's first sex offender registration law in 1947, and Washington passed the nation's first law providing for community notification in 1990. Texas established its sex offender registry in 1991, three years prior to the Wetterling Act mandates.

Second, all three states are deeply invested in their existing systems, which have been continually refined over the years through dozens of statutory and operational adjustments, both prior to and since SORNA's passage in 2006. Although some of these refinements have corresponded with SORNA requirements, others reflect each state's distinct vision surrounding the contours and purposes of its SORN system.

Third and finally, all three systems may be viewed as highly decentralized in their orientation, designed with an emphasis on the informational needs of county and local jurisdictions. Although this characteristic is by no means unique to this particular cluster of states, our analysis suggests that the intergovernmental dynamics within these states play a substantive role in defining the shape of their SORN systems. Specifically, we found that cost and operational impacts on local jurisdictions have been prominent factors in shaping policy decisions involving SORNA across all three states.

### 1. California

Since enacting its first sex offense registration law in 1947 in the wake of the "Black Dahlia" murders, California's SORN policy has undergone dozens of legislative amendments. In 1994, the state passed its first law providing for public access to certain sex offender information, and in 1996 with the passage of California Megan's Law, the state established one of the nation's first mechanisms to provide online electronic access to registrant information. Since SORNA's passage in 2006, the California legislature has passed approximately twenty bills related to sex offender registration and community management.

Based within the California Department of Justice Violent Crimes Information Center, the SORN system evolved with an emphasis on providing

a robust investigatory tool for state and local law enforcement use. Although designed to support the goals of community-based monitoring and public information sharing, the system is oriented by a fundamental purpose of serving as a reliable and accessible source of investigative information.

The state currently maintains the nation's largest sex offender registration system, with over 106,000 active registrants, of which approximately 77,000 reside within the state and are not incarcerated. California currently maintains a single-tier registry system, with most individuals required to register for life—a requirement that generally goes above and beyond SORNA minimum standards regarding duration of registration. The majority of registrants are required to verify their information annually, with those designated as “sexually violent predators” required to verify every ninety days, and those registering as transient required to verify every thirty days. In 2018, the California legislature passed S.B. 384, which will move registration from a single-tier system to a multi-tier system beginning in 2021.

Based on a review by the SMART Office in 2015, California was found to meet or not deserve seven of the fourteen SORNA standards. For the remaining seven areas where the state was determined to not meet requirements, areas of divergence included the state's inability to send certain information to other jurisdictions due to state criminal justice records privacy laws; limitations related to the range of adjudicated juveniles who are subject to registration; the lack of requirements for immediate updates for certain types of information and for twenty-one-day advance notice of international travel; the use of risk assessment (rather than offense of conviction) as a mechanism for establishing frequency of verification updates; statutory penalties for registry noncompliance; and statutory limitations to the information provided on the public website.

Stakeholders attribute California's divergence from SORNA requirements to a range of legal, operational, and intergovernmental factors. One salient theme connects to statutory restrictions governing the release of criminal justice information beyond law enforcement and other justice agencies (e.g., prosecutors and correctional authorities). These issues affect both the inter-jurisdictional transfer of information and the sharing of certain information with the public. Regarding the former, the state does not share information with agencies that are not authorized to access the National Crime Information Center; for this reason, the state is unable to use the SORNA Exchange Portal (which is accessible to certain tribal authorities that do not meet NCIC criteria as law enforcement entities)

to send outgoing registrant information. As for the latter, California law limits the information published on the registry's public website. Based on conviction offense, registrants may have their entire address posted, be designated as "zip code only" or considered "no post" if their information is limited to law enforcement use. The state also excludes certain classes of registrants from public posting, and does not post employer information on the public website. Legal officials participating in the interviews indicated that they did not anticipate the legislature shifting their position on these matters anytime soon.

As the nation's largest system of registration, encompassing over 106,000 registrants across a vast geographic area and hundreds of local jurisdictions (58 counties and 482 municipalities), California faces challenges in re-tiering their registrant population for the 2021 rollout of S.B. 384. Tiering will apply different rules for registrants based on their offense history. California is rolling this process out gradually, including hiring at least fifty additional staff to work on data entry. Registry officials estimate that about 35,000 registrants (33 percent) will be eligible to petition for relief from registration immediately, and the remaining registrants will be automatically tiered because of the recency of their offense. Although re-tiering registration systems is not a unique challenge for states, the volume of registrants in California makes this change especially problematic.

## 2. Washington

Washington established its SORN system in 1990, with the passage of the 1990 Community Protection Act (CPA). Beyond establishing the nation's first system of community notification, the CPA also established the state's mechanism providing for the civil commitment of "sexually violent predators," and set forth a new sentencing structure for those convicted of sexual offenses. Throughout the 1990s, the state passed a series of amendments to its SORN laws, including the application of structured risk assessment for use in the context of registration, notification, and community-based sex offender management.

Washington's system, along with the broader systems of sex offender community management, has generated sustained legislative attention over the span of three decades. The state has made dozens of amendments and adjustments to its SORN policy both prior to and following the passage of SORNA. These have included refinements to their address verification

systems, increasing penalties for failure to register, measures to improve the administration and efficiency of the registration process, clarifying requirements surrounding juvenile registration, and expanding the range of registerable offenses.

From its inception, Washington's SORN system has been designed and operated to emphasize local autonomy. In 2002, the state legislature designated the Washington Association of Sheriffs and Police Chiefs (WASPC) as the entity responsible for the development of a public registry website. Since that time, WASPC's role has been expanded to include primary responsibility for the ongoing development and refinement of the state's model policy, which has been instrumental in the state's efforts to standardize practices across local jurisdictions. WASPC also is responsible for coordination of statewide training and provision of technical assistance to local jurisdictions related to the system for managing and disseminating registry information.

One defining characteristic of Washington's system involves the state's methods for classifying registrants for purposes of establishing certain SORN requirements. It is best described as a "blended" model, which establishes the duration of registration on conviction offense, and establishes other parameters, including the frequency of verification and the release of information to the public, on the basis of a structured risk assessment protocol.

Another distinctive element of Washington's system is the routine use of field-based verification, which is beyond the scope of SORNA. Whereas most state systems require periodic verification at a sheriff's department or police station, Washington's model policy calls for these verifications to be done at the registered address of the individual. Thus, field-based verification serves a dual purpose of verifying and updating any relevant information and enabling local law enforcement to confirm that a registrant is living at a specified address. To support these verification efforts, local law enforcement agencies are provided with state funding, commensurate with the number of registrants within the jurisdiction.

The 2011 SMART Office review established that Washington met or did not disserve ten of the fourteen SORNA standards. This review found divergence from the standards related to the tiering of offenses (Standard III), required registration information (Standard IV), verification and appearance requirements (Standard IX), and registry website requirements (Standard X).



Two of these areas of deviation, Standards III and IX, are by-products of Washington's use of risk assessment for establishing certain registration requirements. This risk assessment system is widely viewed by the stakeholders with whom we spoke during the site visit—including those engaged in state-level policy, registry system management and coordination, and local law enforcement—as integral to their system and its design. Specifically, the risk assessment process is viewed as the primary means through which local law enforcement agencies allocate and prioritize their resources, and target their efforts surrounding compliance enforcement and community notification to those deemed highest risk to recidivate. Coupled with the state's system for field-based verification, which is a time- and resource-intensive process, officials believe that the ability to effectively distinguish between high- and low-risk individuals is necessary and integral to the effectiveness and efficiency of their system. Accordingly, barriers related to Standards III and IX may be characterized as fairly intractable. There is a strong belief among study participants that the processes that have been adopted and refined over the span of three decades are effective in meeting the public safety needs of Washington's communities, and there is relatively little initiative to shift over to what is viewed by most stakeholders as a less efficacious system.

Regarding the other areas in which Washington diverges from SORNA requirements, state officials indicated that they have continued to make incremental adjustments to align with SORNA, but that certain issues are likely to continue to present challenges. For instance, when discussing the state's policy for having its public website report addresses only at the block level (rather than at a specific address, as required by SORNA), participants voiced concern over vigilantism, citing a specific case that had occurred in the state. Participants also expressed concerns about publicizing registrants' employer addresses, which they viewed as potentially problematic for the companies that would be named on the registry. Although these barriers to implementation may be viewed as smaller and "lower-order" issues compared to those surrounding the risk assessment system, these points of divergence appeared deeply embedded in Washington's system and practices.

### 3. Texas

The Texas sex offender registry was established in 1991, and has been modified several times over the years to expand the scope of its reach. Key

developments over the past three decades have included expanding the list of registerable offenses, increasing registration durations, creating new offenses, establishing internet use restrictions for certain registrants, and implementing registration requirements around juvenile delinquency, recidivists, and sexual predators.

As one of the largest systems in the country with over 90,000 registrants, the Texas sex offender registry and its associated systems and policies has been shaped significantly by the needs of local jurisdictions. Case study participants expressed a view of their role as a mechanism for supporting the needs of local jurisdictions, and commonly referred to the influence that sheriffs and local law enforcement agencies have had on the design, shape, and definition of the needs and emphasis of the system. During the site visit, participants alluded to concern among many state legislators that implementing all SORNA regulations would restrict or remove the authority of the local agencies to operate freely.

Following the release of the SORNA guidelines, the bipartisan Texas Senate Committee on Criminal Justice held a series of hearings evaluating how the state should respond to SORNA requirements. The findings from this forum, articulated in a 2011 letter from the Office of the Governor to the Director of the SMART Office, indicated the state's intention to not pursue implementation of SORNA requirements (Boyd, 2011). Citing concerns over SORNA's one-size-fits-all approach, the letter set forth a range of specific concerns over the use of conviction offense as the sole means of establishing terms of registration; resource-related "backlogs and strains on local law enforcement agencies"; lack of discretion surrounding the registration of juveniles; and the significant projected costs to state and local jurisdictions. Summarizing the state's position, the letter concluded:

Texas's sex offender laws are more effective in protecting Texans than SORNA's requirements would be. In short, while Texas shares the federal government's objectives, the oversimplified means by which SORNA seeks to meet these objectives, while costing Texans significantly more, will provide them with far less than Texas law already provides. While SORNA's approach might be appropriate for some states, it is not right for Texas. (Boyd, 2011)

In June 2017, Texas became the final state to submit an implementation packet for SMART Office review, and based on this review, the SMART Office determined that Texas met or did not deserve nine of the fourteen

SORNA standard areas. Key areas in which the state did not meet SORNA standards included issues related to: (1) the mechanisms through which sex offenders must register and update their information, including those related to changes in address, employment, school attendance, and international travel; (2) classification of offenders and associated verification requirements; (3) required information on the state's public registry website; and (4) the state's policies surrounding the notification of originating jurisdictions when an individual fails to appear for registration.

When discussing barriers to implementing SORNA, study participants mirrored many of the concerns outlined in the 2011 Governor's report and letter. Specifically, they expressed concern about the costs and resource burdens on local jurisdictions, and of general resistance among state legislators to making the required adjustments. Perhaps more so than any other case study state, the sentiment of state resistance to the imposition of perceived unnecessary federal mandates emerged as a prominent theme, alongside the tension between perceived costs and benefits of implementing SORNA. Commenting on the state's prospects for reaching SI status, one state official indicated, "To me it feels like the traction to push towards SORNA compliance isn't there," further indicating that they have "agreed to disagree" with federal policy on certain key issues.

#### IV. DISCUSSION

The 2006 Sex Offender Registration and Notification Act (SORNA) represented a pivotal milestone in the evolution of SORN policies and systems in the United States. Envisioning a "comprehensive national system" for the registration of individuals convicted of sexual offenses, SORNA significantly expanded the scope of federal authority over the specific statutory and operational contours of SORN policies within states and other covered jurisdictions.

Much has changed in the nation's SORN systems in the fourteen years since SORNA's passage. Although only one-third of states have crossed the "finish line" of substantial implementation, most of the nation's SORN systems align with a significant majority of SORNA standards. The nationwide analysis undertaken during the project's first phase indicated that 77 percent of standard determinations met acceptable SORNA implementation thresholds across the fifty states (Harris et al., 2017).

Findings from the project's case studies indicate that the process of SORNA implementation has catalyzed state efforts to strengthen their SORN policies and systems, and has produced greater attunement to interjurisdictional issues, both within states that have been designated as having "substantially implemented" SORNA and those that have not. As an outgrowth of these developments, the nation's SORN systems are capturing and sharing a wider range of information, on far more registrants, and in a more consistent fashion than they were in 2006 (Harris et al., 2020).

Yet while identifying these advances toward SORNA's overall vision, the findings from the current study also illustrate a significant array of ongoing challenges beckoning the attention of federal policymakers. While diverse, these challenges can be generally considered in two primary categories—the first pertaining to the growing resource demands that have emerged in the years since SORNA's passage, and the second related to the remaining intractable impediments to further state progress toward the SORNA standards as they are currently formulated.

### A. Resource Challenges

Across case study sites, issues related to administrative and operational "bandwidth" emerged as a prominent theme. Analyses of stakeholder interviews and of supplemental data provided by state agencies indicate that these bandwidth issues stem from a convergence of two SORNA-related factors—a steady expansion of the registrant population combined with a broader array of administrative and operational requirements.

Regarding the former, the overall size of the registrant population has grown by more than 50 percent since SORNA's passage, from just under 600,000 in 2006 to over 900,000 in 2018. While this growth may be attributed to multiple factors, evidence strongly suggests that SORNA-driven changes to state policy have played a significant role. The experiences of Michigan and Pennsylvania described in this study coalesce with the prior research findings that have documented a substantial "net widening" effect related to state-based SORNA implementation, including an expanded universe of individuals subject to registration, significant growth in the proportion and numbers of RSOs subject to lifetime registration, and the increased frequency of required registry contacts (Harris, Lobanov-Rostovsky, & Levenson, 2010).

Alongside the demands of managing a growing number of registrants, field-based workloads have been compounded by expanded administrative and operational demands linked to SORNA implementation. Case study data indicate that states currently require RSOs to update a broader range of personal information, and in a more frequent and timely fashion, than they did in 2006. This expansion in events requiring registration updates has in turn increased average per-registrant transaction volume, and has placed additional administrative workload demands on both state and local agencies. Additionally, case study findings offer multiple indications that SORNA has produced greater attunement to the needs associated with the interjurisdictional exchange of information, and has effectively raised the bar of expectations surrounding the scope and timeliness of information exchange, compliance enforcement, address verification, and the tracking of absconders. Although all of these developments are fully consistent with SORNA's intent, they have also come with a price tag for state and local law enforcement agency resources, which must balance these needs with other public safety priorities.

Our findings therefore suggest that changes to state SORN policy over the past fourteen years have produced growing pressure on state and local resources, and will continue to do so. Although these drivers may not be fully attributable to SORNA, the most salient factors connect in some way to SORNA standards and their implementation. Accordingly, the viability of state SORN systems depends in part on adjustments to federal policies and standards that would extend greater flexibility to states in effectively prioritizing the deployment of limited resources. States' capacity to manage growing demands and deploy resources is inextricably linked to their ability to align their registry requirements to the relative public safety risk presented by individual RSOs, perhaps through the application of evidence-based risk assessment or use of other data-driven mechanisms.

## **B. Understanding the Intractable Barriers**

At the time of SORNA's passage in 2006, SORN systems were fully operational across all fifty states, and encompassed over a half-million registrants. Pre-SORNA federal policies, beginning with the 1994 Wetterling Act, offered states a fair degree of latitude in establishing the frameworks and models for their SORN systems. In addition, as illustrated through the case studies presented here, many state SORN policies and

systems predated any federal involvement in SORN policy, in some cases by several decades. The findings underscore the inherent diversity of state SORN policy and system journeys, having been shaped over the years by each jurisdiction's distinctive legislative, legal, bureaucratic, and intergovernmental conditions. Across both SI and NSI states, the case studies revealed significant differences in operational practices, organizational frameworks, allocated resources, respective roles of state and local agencies, registrant classification systems, registration requirements, among other factors.

The findings also illustrate that most successful movement toward implementation of SORNA standards has been based on modest and incremental policy adjustments, and that more extensive changes to state policy have proven far more difficult. Among those states designated by the SMART Office as SI, some were able to achieve that designation through limited incremental policy adjustments, whereas others required major realignments of their policies and systems. Similarly, among the NSI states, we found some with pre-SORNA policies and practices that were generally consistent with SORNA's general framework, and others that were deeply invested in, and committed to, systems that diverge from SORNA in some fundamental ways. In sum, SORNA has been, or would be, a significantly "heavier lift" for some states than for others.

Although the case study findings identified some instances of NSI states pursuing modest technical adjustments to align with certain standards, most remaining points of divergence were attributable to more systemic and intractable barriers. Across the NSI case study states, state registry officials were consistent in their belief that the prospects for addressing the remaining substantive points of divergence from SORNA standards were limited. Concerns most often cited by state officials consisted of cost impacts (particularly for local jurisdictions), systemic legal barriers, legislative resistance and/or lack of legislative will, and fundamental inconsistency between certain SORNA standards and the underlying design of the state's SORN policies and systems. The alignment of these concerns with those identified from research conducted during the formative years of SORNA implementation (GAO, 2013; Harris & Lobanov-Rostovsky, 2010) suggest that these issues have remained highly intractable over time, and beckon for adjustments to federal policy.

The SORNA implementation experiences of Michigan and Pennsylvania, as outlined in our analysis, serve as instructive case studies reflecting

the challenges of implementing major changes to SORNA policies. As both cases illustrate, legislative passage of SORNA-like statutes represent just the first step in a complex process. After making the necessary statutory adjustments and being granted SI status, these states have faced a range of operational and legal issues as they set about to implement their new policies. Michigan has been precluded by federal court rulings and ongoing legal challenges from implementing key elements of its revised policy. Pennsylvania, also in response to successful legal challenges, was forced to backtrack on some of its statutory changes, and subsequently lost its SI designation. From the perspective of similarly situated states that have, to date, resisted “retrofitting” their otherwise well-functioning systems to adhere to certain SORNA standards, these experiences illustrate some of the significant challenges and impediments that they might face in pursuing a similar path.

Beyond recognizing the importance of the “distance to travel” construct as framed in this analysis, policymakers should also focus attention on a limited group of areas in which SORNA standards have proven problematic for large numbers of states and/or deviate from emergent standards of evidence-based practice. Prior research findings have indicated that, although some of the remaining divergence between state policy and SORNA requirements is isolated and idiosyncratic, the substantial majority is tied to a limited series of particularly challenging and persistent issues, including retroactive application, registration of juveniles, a limited group of public website data elements, and methods of RSO classification (GAO, 2013; Harris et al., 2017). The current analysis offers further context for these findings, demonstrating how much of this divergence is deeply entrenched within state policies and practices, many of which predated SORNA. Hence, it appears that many barriers to SORNA implementation progress may be fundamental and systemic in nature, and difficult to surmount.

One such issue emerging from our data concerns SORNA’s constraints on the application of evidence-based risk classification. Although more than two-thirds of states currently rely exclusively or primarily on offense of conviction to establish registration requirements (Harris, Levenson, & Ackerman, 2014), many utilize additional criteria for this purpose. These criteria, which may be applied through structured risk assessment instruments, may include factors such as perpetrator age, criminal history (sexual and nonsexual), relationship to victim, deviant sexual interests, victim

characteristics, and other variables that have been empirically linked to the probability of sexual re-offense. Although SORNA does not preclude states from utilizing risk assessment systems for certain purposes tied to registration (e.g., prioritizing compliance enforcement operations, establishing supplemental reporting requirements or community notification mechanisms), such systems cannot be applied in a manner that would override SORNA's minimum requirements that are tied directly to conviction offense. Accordingly, states that use *non-conviction* criteria exclusively to establish duration of registration, frequency of required updates, and inclusion on the public registry have generally been called upon to significantly revise their established systems in order to achieve SORNA compliance.

Yet, our findings indicate that states utilizing risk assessment methods for determining some registry-related requirements have generally done so strategically and in the context of a coherent public safety rationale. Washington, for example, applies risk assessment in the context of a "blended" model, which establishes the duration of registration on conviction offense, and determines frequency of verification and the release of information to the public based on a structured risk assessment protocol. The system is widely viewed by the stakeholders as an integral element to their system and its design, and as the primary means through which local law enforcement agencies allocate and prioritize their resources, and target their efforts surrounding compliance enforcement and community notification. In Iowa, the state has integrated risk assessment into processes related to relief from registration requirements, which remains the state's one remaining area of deviation from SORNA standards. In California, which has integrated risk scores into its registry for several years as part of its comprehensive model of sex offender management, the planned adoption of risk-based mechanisms for registration relief beginning in 2021 will help that state manage the mounting operational demands associated with managing the largest population of registrants in the nation.

In all these instances, our findings indicate that risk-based approaches to establishing certain registration requirements have been deployed in direct service to, and not counter to, community safety objectives. Related to the aforementioned growing resource challenges, this particular dimension of SORNA standards is viewed by many as integral to state ability to prioritize resources and manage the challenges of a growing RSO population.



### C. Conclusion

The study findings presented here suggest that progress toward state implementation of SORNA standards as they currently exist is close to reaching a point of saturation. It is notable that, of the seventeen states with SI designations as of 2020, only four have been so designated since 2011. Moreover, findings from the comprehensive study that formed the basis for this analysis indicate that levels of adherence to current SORNA standards are largely independent of the effectiveness of states' SORN information-sharing practices and/or states' commitment to SORNA's broader vision and public safety goals (Harris et al., 2020).

Coupled with the significant changes in the SORN policy landscape and the advances in evidence-based practice over the past fourteen years, the findings presented here beckon for a fresh look at the contours of federal policy, including the scope and role of SORNA standards. The study data suggest that the standards should be recalibrated to advance the goals of inter-jurisdictional consistency while also recognizing the inherent limits to standardization among the states. Specific factors to be considered include the variation in structural design of state SORN systems, and differential and sometimes intractable state challenges associated with meeting certain SORNA standards. Looking beyond the standards, our findings suggest that the public safety goals set forth at the time of SORNA's passage would be best served through federal initiatives that provide resources and support to build and strengthen the SORN community of practice and encourage the adoption of evidence-based models of practice that are calibrated to each jurisdiction's unique needs.

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