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Sex Offender
Registration and
Notification Policies:
Summary and
Assessment of
Publications on
Implementation
Challenges for States

JUNE 2020



This research brief summarizes the Federal Research Division's (FRD's) analysis of all 50 states' efforts to implement the standards and requirements detailed in the Sex Offender Registration and Notification Act (SORNA), and assessment of ten journal articles—seven peer-reviewed research studies and three essays—on the legislative, fiscal, and operational SORNA implementation challenges states purportedly face. We provide a summary of the studies and essays, as well as a critical analysis of the research methodologies. As policy-makers often look to researchers to inform decision-making, it is critical to not merely rely on conclusions drawn, but to assess the strength of findings and quality of research.

FRD narrowed literature selection to ten publications most relevant to the discussion of states' SORNA implementation challenges and separated these challenges into three categories—legislative,² fiscal,³ and operational.⁴ Some publications touched upon more than one challenge,⁵ and many discussed additional topics, such as jurisdiction-specific requirements not mandated by SORNA,⁶ other aspects of the Adam Walsh Child Protection and Safety Act,⁷ and topic areas outside states' implementation altogether.⁸

Analysis Of State Implementation Efforts

The Adam Walsh Child Protection and Safety Act of 2006 requires that all states, tribes, and territories implement SORNA or face penalties. All states have implemented parts of SORNA, though 32 states have not substantially implemented SORNA. Each state's laws and policies have been reviewed and assessed against SORNA requirements.¹ **Analysis of states' implementation reviews identified four general categories of requirements that seemingly pose the most challenge for jurisdictions:**

- **Offenses that Must Be Included in the Registry;**
- **Keeping the Registration Current;**
- **Verification/Appearance Requirements; and**
- **Public Registry Website Requirements.**

In each of these categories, at least one requirement appears to be a primary issue that most or none of those states are able to meet. For example, of states unable to implement "Keeping the Registration Current," none met the underlying requirement of providing notifications to other jurisdictions when a registered sex offender intends to relocate to another country. Similarly, for states that do not currently meet "Public Registry Website Requirements," none met the sub-requirement of displaying comprehensive requisite information on public registry websites.

Legislative Challenges To SORNA Implementation

Of the three publications addressing states' purported legislative challenges to SORNA implementation, one focused on SORNA's failure-to-register component, arguing that it is "ambiguous" and would lead to "inevitable exhaustive legal challenges" in the form of registered sex offenders (RSOs) failing to provide timely or truthful registration information⁹—however, any challenges along these lines have not prevented most states from implementing the failure-to-register component. A second article identified as being partially relevant to legislative challenges to SORNA implementation appeared to conflate SORNA obligations and

jurisdiction-specific requirements that are not a part of the act,¹⁰ reducing the strength of its claims. The third article discussed legislative challenges faced by the state of Nevada, but Nevada substantially implemented SORNA shortly after the article's publication, rendering its argument moot.¹¹

Fiscal Challenges To SORNA Implementation

Five publications addressed states' fiscal challenges to SORNA implementation. One article enumerated costs to states as encompassing additional personnel, new software installation and maintenance, additional jail and prison space, increased court and administrative needs, increased workloads for law enforcement, and legislative costs associated with crafting and adopting new or revised laws.¹² In past years, some states reported concerns regarding costs, though often before attempting to implement SORNA, and the focus of these cost concerns varied from state to state.¹³ However, while all five identified publications addressing states' fiscal challenges suggested that SORNA is prohibitively costly to implement, none investigated the actual costs incurred by states that have substantially implemented the act.¹⁴ Several articles relied instead on assumptions¹⁵ and estimates, producing cost calculations wildly at odds with the states' reported actual costs.¹⁶

Operational Challenges To SORNA Implementation

FRD identified three research studies that addressed, at least in part, states' operational challenges to SORNA implementation: a federal government survey of state officials and two academic articles. The government survey reported that among its state official respondents' most-reported operational issues are those involving increased workloads for law enforcement agencies.¹⁷ The surveying agency was tasked with evaluating specific questions regarding impacts post-enactment of SORNA; thus, this was not an academic study. Surveys of this type within an academic context with scientific rigor would be strengthened with independent verifications of survey respondents' self-reported information (not doing so raises questions as to the accuracy of the information gathered), as well as establishing a baseline or point of comparison by gathering information about states' experiences implementing sex offender laws prior to SORNA. The academic articles employed a mixed-methods approach that saw the conducting of semi-structured interviews informing a national survey of law enforcement officials, including agency leadership, civilian employees, and uniformed personnel.

The surveys to law enforcement differed in approach, sampling pool, and subject area, but a few main points were gleaned from respondents' answers to each study's questions. One study found that while uniformed staff were more worried about having too many sex offenders to monitor, agency leaders and civilian employees were concerned about sex offender registration and notification systems' efficacy, completeness, and accuracy, including the systems' ability to distinguish between high- and low-risk offenders, resources being used on low-risk

offenders, a lack of integration with other justice information systems, and outdated or unreliable address information.¹⁸ The other study in querying law enforcement respondents' views of the most problematic areas of offender noncompliance, found that jurisdictions' varying staffing and resource levels, reluctance by some prosecutors to pursue noncompliance cases, and technology errors pose operational challenges.¹⁹

Both law enforcement studies suffered from very low response rates (which raises the risk of a nonresponse bias) and nonrandom convenience samples. Additionally, researchers in both studies misused statistical tests—in one, researchers reported some statistically insignificant results as if they were significant,²⁰ and in the other, researchers inappropriately calculated the averages of ordinal data.²¹

Conclusion

In conducting a literature review and assessment of available publications on states' SORNA implementation challenges, FRD found that nearly all studies examined presented problems with research validity, and nonscientific essays typically revealed researchers' biases²² against SORNA and relied on misleading assertions or unsubstantiated statements. Overall, conclusions within this body of research and essays did not align with the challenges apparent within the SMART Office's state implementation reviews. These problems create uncertainty in the literature, which reveals a number of gaps that need more extensive and better quality investigation. New research that is appropriately designed to explore the underlying reasons behind states' difficulties implementing SORNA would bring much needed clarity to the field. Any solutions that are identified could also help bring the remaining states considered to be not substantially implemented into compliance with the act's requirements.

Sound practices in maximizing statistical validity include the random selection of subjects, collecting data on all variables with potential impact, the random assignment of subjects to experimental groups and control groups, and collecting data on outcomes before and after experimental treatment.

Ordinal data is derived from the assignment of values to variables with natural, ordered categories (e.g., responses such as "Strongly Disagree, Disagree, Neither Agree nor Disagree"), but distances between the variables are unknown. Generally, calculating averages or standard deviations of ordinal data is not mathematically sound because equal distance between the categories cannot be assumed.

¹ U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, "SORNA Implementation Status," accessed May 6, 2020, <https://www.smart.gov/sorna-map.htm>.

² Stephanie Buntin, "The High Price of Misguided Legislation: Nevada's Need for Practical Sex Offender Laws," *Nevada Law Journal* 11, no. 3 (2011): 770–92, <https://scholars.law.unlv.edu/nlj/vol11/iss3/7>; Emily Horowitz, "Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice?," *Journal of the Institute of Justice & International Studies* 7 (2007), <https://ncrj.org/get-informed-2/growing-media-and-legal-attention-to-sex-offenders-more-safety-or-more-injustice/>; Richard G. Wright, "From Wetterling to Walsh: The Growth of Federalization in Sex Offender Policy," *Federal Sentencing Reporter* 21, no. 2 (2008): 124–32, <https://www.jstor.org/stable/10.1525/fsr.2008.21.2.124>.

³ Richard B. Belzer, "The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification," *R Street Policy Study* 41 (2015), <https://www.rstreet.org/wp-content/uploads/2015/09/RSTREET41.pdf>; Andrew J. Harris, Christopher Lobanov-Rostovsky, and Jill S. Levenson, "Widening the Net: The Effects of Transitioning to the Adam Walsh Act's Federally Mandated Sex Offender Classification System," *Criminal Justice and Behavior* 37, no. 5 (2010): 503–19, doi: 10.1177/0093854810363889; Justice Policy Institute, "What Will It Cost States to Comply with the Sex Offender Registration and Notification Act?," August 2008, http://www.justicepolicy.org/images/upload/08-08_fac_sornacosts_jj.pdf; Jennifer N. Wang, "Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act," *New York Law School Law Review* 59 (2014/15): 681–705, http://nv.womenagainstry.org/wp-content/uploads/2016/07/Volume-59-4.Wang_.pdf; Wright.

⁴ U.S. Government Accountability Office (GAO), *Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects*, GAO-13-211 (Washington, DC: GAO, 2013), <https://www.gao.gov/products/GAO-13-211>; Andrew J. Harris et al., "Law Enforcement Perspectives on Sex Offender Registration and Notification: Effectiveness, Challenges, and Policy Priorities," *Criminal Justice Policy Review* 29, no. 4 (2018): 391–420, doi: 10.1177/0887403416651671; Scott M. Walfield et al., "Law Enforcement Views on Sex Offender Compliance with Registration Mandates," *American Journal of Criminal Justice* 42, no. 4 (2017): 807–32, doi: 10.1007/s12103-017-9386-6.

⁵ See, e.g., Wright.

⁶ See, e.g., Horowitz, which focuses on a 2007 New York state law concerning the civil commitment of sex offenders; civil commitment is not a requirement under SORNA.

⁷ See, e.g., Wright.

⁸ See, e.g., Belzer, which predominantly focuses on the costs to offenders, their families, and their communities rather than on the

costs to states. See also Walfield et al. and Harris et al., which, respectively, explore recidivism and residency restrictions.

⁹ See, e.g., Wright, 125, 129. However, FRD's analysis of the states' implementation reviews revealed that this failure-to-register requirement, despite its administrative burden, does not currently present an obstacle to SORNA implementation. See also Buntin.

¹⁰ Horowitz. As mentioned, this article heavily focuses on civil commitment laws in New York.

¹¹ Buntin.

¹² Wang.

¹³ Notably, 12 of the 47 states responding to the 2009 SEARCH survey on state compliance with SORNA cited cost as an issue ("SEARCH Survey on State Compliance with the Sex Offender Registration and Notification Act [SORNA]," April 2009, <http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf>).

¹⁴ See, e.g., a widely cited and undated position paper on the Adam Walsh Act published by the California Sex Offender Management Board, which provides figures for the cost of implementation in California ("Adam Walsh Act," accessed June 17, 2019, <http://www.asomb.org/docs/Adam%20Walsh%20Position%20Paper.pdf>). Other than referring to a report by the nonprofit Justice Policy Institute, no sources are provided nor any explanation given of how the board arrived at its numbers. See also Wright. As mentioned, this article focuses on an aspect of SORNA (failure to register as a sex offender) that does not appear to be an actual concern, either legislatively or fiscally, for states based on the implementation reviews.

¹⁵ See, e.g., Belzer.

¹⁶ See, e.g., Justice Policy Institute, which uses a formula based on Virginia's initial figures to estimate that it would cost Ohio more than \$18 million to implement SORNA, when in fact, Ohio's own fiscal impact statement estimated that the state would incur a total cost of \$475,000 in one-time expenses ("Fiscal Note & Local Impact Statement: 127th General Assembly of Ohio; Revised," June 20, 2007, 1, <https://www.lsc.ohio.gov/documents/gaDocuments/127ga/sb0010sp.pdf>). Additionally, FRD found that Virginia revised its proposed legislation to comply with SORNA's requirements and ensure that implementation would not be so costly; the modified initial costs totaled \$59,345 ("2008 Fiscal Impact Statement," March 27, 2008, <https://lis.virginia.gov/cgi-bin/legp604.exe?081+oth+SB590FER122+PDF>).

¹⁷ GAO.

¹⁸ Harris et al.

¹⁹ Walfield et al.

²⁰ Harris et al.

²¹ Walfield et al.

²² See, e.g., Buntin, which uses the phrase "misguided legislation" in the very title. See also, Wright, which uses phrasing such as "unintended consequences" while exploring the Adam Walsh Act's soundness as public policy (143).