

**THE 2006 ADAM WALSH CHILD PROTECTION & SAFETY ACT (AWA)  
TITLE I: SEX OFFENDER REGISTRATION & NOTIFICATION ACT (SORNA)**

**SORNA IMPLICATIONS FOR WISCONSIN PUBLIC DEFENDER CLIENTS**

SORNA (42 USC 16901-62) establishes a comprehensive, mandatory national system for the registration of sex offenders and offenders against children. States that fail to substantially implement the Act by July 29, 2009 face a 10% reduction of Byrne Grant funding. Implementation plans are due in April 2009. We do not know whether Wisconsin will opt out, as several states have done. If implemented as written, we can expect the effects outlined here.

Under SORNA, any qualifying state court conviction or juvenile adjudication results in a federal registration and reporting requirement, regardless of whether the offender is required to register under state law. SORNA registry information will be available to the public on the Internet. The offender's tier classification determines the duration of registration, frequency of required show-ups, and penalty for non-compliance.

Information about qualifying offenses, retroactivity, implementation guidelines, tiers of registration, exemptions and penalties is available on web sites maintained by the Sex Offender Sentencing, Monitoring, Apprehension, Registration and Tracking (SMART) Office of the U.S. Department of Justice's Office of Justice Programs, <http://www.ojp.usdoj.gov/smart>, and on the AWA Resource Page maintained by the Training Branch of the Office of Defender Services for the Federal Defender, at [http://www.fd.org/odstb\\_AdamWalsh.htm](http://www.fd.org/odstb_AdamWalsh.htm).

**A. Some Differences Between Wisconsin's Sex Offender Registry and SORNA's Internet Registry**

**Wisconsin**

*Effective December 25, 1993*

*Qualifying offenses:*

See Wis. Stat. § 301.45, and DOC website at <http://offender.doc.state.wi.us/public/fyi/faq.html#A240>.

Consensual "underage sexual activity" (unless victim is at least 12, and offender is under age 19, and offender is no more than 4 years older or younger than victim).

"Sexually motivated" crimes under Wis. Stat. ch. 940 (against life and bodily security), 944 (against sexual morality), 948 (against children), §§ 942.08 (invasion of privacy), 943.01 to 943.05 (trespass or damage to property).

971.17 Not Guilty by Reason of Mental Disease-of a listed sex offense

975.06 Sex Crimes Law Commitment

980.01 Sexually Violent Person Commitment

*Juvenile adjudication* - registration requirement is discretionary, Wis. Stat. § 938.34 (15m) and (16); *Cesar G.*, 2004 WI 61.

*Publication of registry:*

No juveniles on Internet registry - Information about juvenile offenders and juvenile proceedings is disclosed only to victims, law enforcement and corrections officials. (Law enforcement can disclose information necessary to protect public safety, but cannot post it on Internet, Wis. Stat. § 301.46 (5) (c).)

*Duration of registration:*

See Wis. Stat. §§ 301.45 (3), (5) and (7), 938.34 (15m)

15 years following discharge from sentence, supervision or commitment

Lifetime – in court’s discretion or if prior conviction for sex offense

Expungement on request if conviction or adjudication is vacated, reversed or set aside.

*Penalty for failure to register:*

Maximum penalty is Class H felony (6 years).

**SORNA**

*Effective July 27, 2006, retroactively applied*

*Qualifying offenses:*

“Statutory rape” (unless victim at least 13 and offender no more than 4 years older),

Wis. Stat. § 948.09 Sexual Intercourse with a Child Age 16 or Older.

*Juvenile adjudication* if offender is age 14 and older – registration is mandatory.

(Whether juveniles will be required to register depends upon whether WI seeks and obtains a determination from the SMART Office that our state constitution 1) requires that juveniles not be placed on SORNA without first determining that placement is required under *Cesar G.*, 2004 WI 61, and 2) consequently allows only “substantial compliance” with SORNA.)

*Publication of registry:*

Automatic Internet publication of registry.

*Duration of registration:*

15 years duration Tier I, reduced by 5 years if “clean record” for 10 years

25 years duration Tier II, no relief for “clean record”

Life duration Tier III, reduced to 25 years if “clean record” for 25 years and offense was a juvenile adjudication

*Penalty for failure to register:*

A federal criminal 10-year maximum penalty is triggered whenever a person who is required to register engages in interstate commerce (e.g., crosses state line or enters onto a reservation).

**B. SORNA qualifying offenses**

**Adult convictions** 42 U.S.C. § 16911 (5) (A) and (C), (7) and (14)

1. Offenses whose elements involve a sexual act or sexual contact (regardless of victim’s age).
2. Most sex offenses (abuse, exploitation, solicitation, use in sexual performance, video voyeurism; possession, production and distribution of pornography; use of Internet to facilitate or attempt criminal sexual conduct) and abduction offenses (false imprisonment, kidnapping (non-parental), transportation for illegal sexual activity) involving minors.

3. Attempts or conspiracies to commit the above.
4. Most likely all Wis. Stat. sections that are qualifying offenses for WI registry:
  - 940.225(1) First Degree Sexual Assault
  - 940.225(2) Second Degree Sexual Assault
  - 940.225(3) Third Degree Sexual Assault
  - 940.22(2) Sexual Exploitation by Therapist
  - 940.30 False Imprisonment-victim was minor and not the offender's child
  - 940.31 Kidnapping -victim was minor and not the offender's child
  - 944.01 Rape (old statute)
  - 944.06 Incest
  - 944.10 Sexual Intercourse with a Child (old statute)
  - 944.11 Indecent Behavior with a Child (old statute)
  - 944.12 Enticing Child for Immoral Purposes (old statute)
  - 948.02(1) First Degree Sexual Assault of a Child
  - 948.02(2) Second Degree Sexual Assault of a Child
  - 948.025 Repeated Acts of Sexual Assault of a Child
  - 948.05 Sexual Exploitation of a Child
  - 948.055 Causing a child to View or Listen to Sexual Activity
  - 948.06 Incest with a Child
  - 948.07 Child Enticement
  - 948.075 Use of a Computer to Facilitate a Sex Crime
  - 948.08 Soliciting a Child for Prostitution
  - 948.095 Sexual Assault of a Student by School Instructional Staff
  - 948.11(2)(a)-(am) Exposing Child to Harmful Material-felony sections
  - 948.12 Possession of Child Pornography
  - 948.13 Convicted Child Sex Offender Working with Children
  - 948.30 Abduction of Another's Child;

and § 948.09 Sexual Intercourse with a Child Age 16 or Older (in some cases), which is not a qualifying offense for WI registry.

**Juvenile adjudications** 42 U.S.C. § 16911 (1), (5) (B), (6) and (8)

1. Offender is 14 or older
2. Offense comparable to “aggravated sexual abuse” under 18 U.S.C. § 2241:
  - a. Sexual assault by force or threat of force,
  - b. Sexual assault by involuntarily drugging or rendering the victim unconscious, and
  - c. Offenses involving sexual acts with victims below the age of 12.
  - d. Most likely violations of Wis. Stat. §§ 940.225, 948.02 and 948.025.
3. Attempt or conspiracy to commit the above
4. Offense involving consensual sexual conduct between minor victim at least 13 years old and offender who was not more than 4 years older is not qualifying offense.

**C. SORNA classes of sex offenders** 42 USC § 16915

**Tier I – Lowest (default) category.** Includes offenders who do not satisfy criteria for classification in higher tier, such as **misdemeanor offenses and possession of child pornography.**

Verification/show-up – annually

Duration of registration – 15 years, reduced by 5 years if “clean record” for 10 years

Discretionary exemption of Internet information about offenders not convicted of offenses against minors, 42 U.S.C. § 16911 (7).

**Tier II – Generally felony sexual abuse or sexual exploitation offenses involving minors, including sexual contact with minors (and attempts and conspiracies to commit same), sex trafficking, coercion and enticement, child prostitution, solicitation, and production or distribution of child pornography.** Also, offenders convicted of any felony sex offense that occurred after a prior sex offense conviction.

Verification/show-up – semi-annually

Duration of registration – 25 years, no relief for “clean record”

**Tier III – Generally felony sex offenders convicted of sexual acts (rape or rape-like offenses, assaults) with victims of any age, sexual contact offenses with a victim below the age of 13, non-parental kidnapping,** and attempts or conspiracies to commit any of these offenses. Also, offenders convicted of a Tier II offense that occurred after a prior sex offense and offenders who are **sexually violent predators. Juvenile offenders** fall within Tier III.

Verification/show-up – quarterly

Duration - Life, reduced to 25 years if “clean record” for 25 years and offense was a juvenile adjudication