

Tribal Implementation of the Sex Offender Registration and Notification Act (SORNA) in 2014: Federal, Tribal, State and Local Perspectives

Webinar Q & A

Moderator: Roger Przybylski (Consultant and Founder RKC Group)

Presenters:

Allison Turkel (Senior Policy Advisor, SMART Office)

Jim Warren (Consultant, Fox Valley National Criminal Justice Training Center)

Warren Warrington (Master Sergeant, Menominee Tribal Police Department)

Chris Lobanov-Rostovsky (Program Manager, Colorado Division of Criminal Justice)

1. Can you provide examples on the range of responses that you have seen in regards to SORNA from the various nations?

Allison Turkel: *The range of responses varies according to the different stages of implementation. Some tribes have completely implemented on their own using resources that were provided as well as resources they have. Some tribes have worked with the counties by sharing the responsibilities and some have entered into complete MOU users.*

Jim Warren: *All tribes are unique because of their cultural and traditional backgrounds or the way their tribal government is set up. When you go to the tribal community, you are going to find a very unique vision, then you couple it with the 50 states and how those individual tribes interact with those states. The difference in response can be mind boggling. You have to treat each individual tribe and each individual jurisdiction as its own separate entity. The commonalities are there, but they are often so unique and so different you have to set up a program that meets the individual needs of that tribe and how they interact with the state. That can have a bearing on the response that that tribe will have.*

Chris Lobanov-Rostovsky: *The range of responses can often encompass one tribe. At one point a tribe and the tribal council may be working in one direction, then with a new council or new tribal government, the tribe can head in a different direction. We have seen that in a number of different cases where tribes were working in one direction, perhaps even working towards substantial implementation or deciding not to, then a new tribal administration will come in and all of the sudden there is a different political view point and a tribe may go in a different direction. It is important to recognize the range of responses may occur within an individual tribe based on tribal*

administration and who is in charge at any given point.

2. We have talked a lot about technical assistance and various resources that can assist the tribes in implementation; what is being done, or what is available to assist the tribes so that they will have NCIC access to input information?

Allison Turkel: *This is a complex, ongoing issue. Access is only part of the issue. A good percent of the tribes have the ability to access or read-only, NCIC. The direct connection to NCIC is always through state entities. One exception is JUST, a federal data point. The general way folks do this is through existing state infrastructures. Many tribes have been able to work with their tribes, and get either access or what we call "full access", the ability to enter data, which becomes a requirement. We just had our most recent working group, which was a collaboration of multiple DOJ federal agencies, NBIA, etc., to try and come to some resolution on this. There is not a complete answer for that unfortunately, but it is something we continue to address. The first line in addressing this is in the states. You heard Warren talking about their unique situation, so I do not want the tribes who are on the line to be confused or mistaken by it. Generally, you cannot enter your data into your own website or into your sex offender website. That will not connect with any NCIC databases. There are some states that have single entry. For example, Florida, when they enter their sex offenders and register them, it goes into NCIC and SOAR, but that is rare. Any folks using TSOAR, Offender Watch or any of those entities for their public website, will not be able to interface. NCIC is a very shut down, constrained database. There is the justice system which some of the tribes have entered in to, which comes through a pilot project from the COPs office. That is a short term solution. The only way that continues to be funded is if the COP office pays funding for it. No tribe will be found to not have implemented if they are unable to enter NCIC data due to states refusal to allow them the ability to do so.*

3. Are there templates or model policies and procedures that you have that can be shared with the tribes on various issues that relate to SORNA implementation?

Jim Warren: *Yes. It is put out initially and it is still in effect; a model tribal code that several of the tribes use to develop their own code. It is a kind of template. It gives you an idea of what a typical code should look like. However, each code has to be tempered and developed to meet the individual needs of that tribal community. Consequently, the policies and procedures which reflect that code would then again be reflected in what the individual tribal code was. We do not provide any specific policies and procedures. However, I talked about networking, picking up the phone and talking to another tribe on how they did their policies and procedures, might be a way they can help themselves. The SMART office has provided some documents. You can go to the SMART website and download those documents and get all the requisite information.*

Allison Turkel: *When looking at some of the early policy and procedures that implementing tribes were using, they really were not policy and procedure. Unfortunately, they were just copies of the codes with a few directives. What we are looking for now, is the policy and procedures that would direct how an offender would be registered no matter how they showed up. There is a whole variety of ways that happens. If the registrar were to leave tomorrow, could the next person walking in pick up that policy and procedure and know how to: notice the offenders, register the offenders, collect all the information, submit all the information, and keep their registry up to date. The reason we did not do a model is due to the difference in jurisdictions. We have an outline that is available on our website.*

4. Some tribes have amended their code to reconcile with the tiers in order to determine how to categorize registration. Who classifies them in the registration level?

Allison Turkel: *The registration is done based on the codes adopted by the tribe. The tribes are the closest to SORNA in any of the jurisdictions because of what had been done previously. That classification is done by the registering agency. For example, if an offender was convicted under state law and came to live on tribal lands, they would show up to tribe X's registry and the tribal registrar would be responsible for registering that offender based on tribal law. We have seen some tribes register and tier them according to where they came from. That's not appropriate. If the offenders are registered under your law, it must be tiered accordingly. That means you could have an offender who is in a state that has not adopted SORNA, they have a different standard and different obligations under state law. That's just the way that it plays out.*

5. Are there unique challenges to tribes working in states when a state has opted not to be SORNA compliant? If so, what are those challenges? How are they being dealt with?

Chris Lobanov-Rostovsky: *In working with tribes, I know there has been a number of tribes that have expressed the concern of the state is not implementing. If the tribe has the ability, based on being one of the tribes that are authorized by congress to set up a registry, that does not preclude them from being able to do a SORNA implementation process within their tribal jurisdiction. If they are reliant upon the state for the access to upload the information in the registry, that could prove to be a challenge because the state may continue to utilize its current system and tier offenders accordingly. Consequently, there may need to be some collaboration with the state in terms of how to do that. There are a number of challenges that come up when states have taken a position to not implement SORNA. From my experience working with other states and talking to other states, there may be certain components of SORNA that tribes are either philosophically not wanting to do or it may be some kind of legality issue. Most states, at this point, are working on at least some aspects of SORNA. Hopefully as a tribal entity you will be able to work with the state and work on things both*

tribe and state are seeking to implement. One of the things we have heard a fair amount of is, states having previously existing registry schemas that involve risk assessment systems. They are ranking based on risk assessment. That may make it more of a challenge for a tribe in terms of being able to tier their offenders being within a state where they are doing a risk classification system.

Allison Turkel: *In that scenario, since the tribes are supposed to tier their own offenders based on conviction, it just means they have to go back and look at the convictions, see where the conviction fits in the tier base. If they have issues with that, they should check with their attorneys. If they have any other problems, we always try to assist as best we can. Some of the states that are not implementing SORNA still provide a lot of assistance through tribes. We have seen that in New Mexico and Washington state. That in of itself has not been a bar. We do have some states that have not been cooperative at all, which is unrelated to whether or not they are implementing SORNA. Another challenge is, the states not being cooperative with their tribes. Whenever we hear of any obstacles tribes face, we try to address the states directly. We have contacts and encourage them to provide assistance. At our workshop, the tribes are able to meet with the states they are located in.*

6. Are there TA services like those we discussed today that can be extended to the state if they want to hold a meeting, at the local level?

Allison Turkel: *Our technical assistance provider is built to provide technical assistance to tribes. The best thing to do would be for the tribe to make a technical assistance request to Fox Valley. That form is available on our website. I saw a question about TA to states where the tribes had been delegated to the state. Once the tribes are delegated to the state, they are no longer a SORNA registration jurisdiction, and therefore our funding is not available. We do have some who have used their reallocation funding to create liaisons, have meetings, or to assist them in working with the tribes. Also, there are states that have applied for and received grants. We encourage in those grants, they use the funding to assist their SORNA implementing tribes or assist in working with the tribes where the responsibility has been delegated to the state.*

7. For Public Law 280 Tribes that are being covered by the state - Is there any ability for the tribe to take on SORNA responsibility?

Allison Turkel: *This is an extremely complex question. As far as funding and resources that come from the SMART office, because our funding and resources are built for SORNA jurisdictions, there is no direct funding to the tribes that are located in the PL 280 states. That is the quick answer. The overall answer on legal authority and things of that nature is much more complex. I would say if it is something a tribal entity would like to discuss with the SMART office, then they contact us directly.*

8. Can you please reiterate the process for requesting technical assistance?

Allison Turkel: *There are multiple ways to do that. Jim can provide you with the email address, the telephone number, how to request technical assistance from Fox Valley. There is a form on the SMART office website: www.smart.gov. On the left hand side of the website, it says "Indian Country". If you open it, there is a technical assistance form which you will then submit. We review with Fox Valley and try to collaborate on the best way to provide technical assistance. If for any reason you have trouble accessing or finding those entry points, you can email us at - asksmart.gov, and we will send you the information that you need.*

Jim Warren: *If you have any issues with forms or contacting anybody, call the SMART office or Fox Valley. They will walk you through the TA request process. We try to make it as easy and seamless as possible. Any questions, issues or problems, just email us, call us or fill out the form. It's really easy to request TA.*

This webinar series is supported by Grant No. 2010-DB-BX-K086 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions are those of the speakers.