

It is contemplated that the juvenile's attorney will review the SORNA colloquy in detail with the juvenile and that by signing the colloquy, the attorney is confirming his or her belief that the juvenile fully understands what is set forth in the colloquy and the potential ramifications of the admission(s).

It is important to note that it will be necessary to modify this colloquy upon the enactment of SORNA-implementing legislation in Pennsylvania.

This colloquy is available on the website of the Juvenile Court Judges' Commission, at www.icjc.state.pa.us, and can be customized for your jurisdiction.

Final SORNA Guidelines

The Department of Justice released the final "National Guidelines for Sexual Offenders Registration and Notification" (SORNA Guidelines) on July 1, 2008. The Guidelines provide, specifically, that SORNA's requirements took effect when SORNA was enacted, on July 27, 2006, and they have applied since that time to all "sex offenders" as defined in SORNA, including those whose conviction's pre-date SORNA enactment. With respect to adjudications of delinquency, this means that the final Guidelines envision SORNA applying retroactively to adjudications of delinquency for a SORNA-triggering offense which occurred prior to the enactment of SORNA and prior to the enactment of SORNA-implementing legislation in the states.

The Final Guidelines provide that in order to satisfy the "clean record" precondition for reduction of the registration period:

- The sex offender must not be convicted of any offense for which imprisonment for more than one year may be imposed.
- The sex offender must not be convicted of any sex offense.
- The sex offender must successfully complete any periods of supervised release, probation and parole.
- The requirement of "successfully" completing periods of supervision means completing these periods without revocation.
- The sex offender must successfully complete an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General. Jurisdictions may make their own decisions concerning the design of such treatment programs, and jurisdictions may choose the criteria to be applied in determining whether a sex offender has "successfully" completed a treatment program, which may involve relying on the professional judgment of the persons who conduct or oversee the treatment program.

Generally, the states have the later of 3 years after enactment of SORNA, or 1 year after software that is to be developed by the Attorney General is available, to implement the new sex offender registration and notification requirements of SORNA. The legislation does provide, however, that the Attorney General may authorize up to two 1-year extensions of this deadline. All jurisdictions are required to submit compliance packets to the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office) by April 27, 2009. A jurisdiction's failure to implement SORNA by July 27, 2009 is to result in a mandatory 10% reduction in Byrne Justice Assistance Grant funding, which is administered in Pennsylvania by the Pennsylvania Commission on Crime and Delinquency (PCCD).

Because Pennsylvania has yet to enact its implementing legislation, issues such as the specific “triggering” offenses, the specific registration and notification requirements, and whether the legislation will be applied retroactively have yet to be determined.

Application of SORNA in Juvenile Delinquency Cases

The relevant provisions of Section IV (A) of the final SORNA Guidelines are as follows:

“Convictions” for SORNA purposes include convictions of juveniles who are prosecuted as adults. It does not include juvenile delinquency adjudications, except under the circumstances specified in SORNA § 111(8). Section 111(8) provides that delinquency adjudications count as convictions “only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.”

Hence, SORNA does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes (or attempts or conspiracies to commit such crimes). Considering the relevant aspects of the federal “aggravated sexual abuse” offense referenced in section 111(8), it suffices for substantial implementation if a jurisdiction applies SORNA’s requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence; or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

“Sexual act” for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact. This follows from the relevant portions of the definition of sexual act in 18 U.S.C. 2246(2), which applies to the 18 U.S.C. 2241 “aggravated sexual abuse” offense. (The summary of comments received on these Guidelines as initially proposed for public comment may be consulted for further explanation concerning this understanding of the requirements for substantial implementation of section 111(8).)

As with other aspects of SORNA, the foregoing defines minimum standards. Hence, the inclusions and exclusions in the definition of “conviction” for purposes of SORNA do not constrain jurisdictions from requiring registration by additional individuals—e.g., more broadly defined categories of juveniles adjudicated delinquent for sex offenses—if they are so inclined.

The Summary of Comments, which comprises Appendix A of the Final Guidelines, provides some additional clarification on this issue. Of significance is the following language contained in the “Juvenile Adjudications” section of the Comments:

“Based on this reconsideration of the juvenile coverage issue, the final guidelines reflect a judgment that the objectives of SORNA § 111(8) will not be substantially undermined if jurisdictions are afforded discretion concerning registration and notification for juveniles adjudicated delinquent on the basis of offenses that are within the definitional scope of 18 U.S.C. 2241 only because of the age of the victim. In positive terms, jurisdictions will be considered to have substantially implemented SORNA in this context if they apply SORNA’s registration and notification requirements to juveniles at least 14 years old who are adjudicated delinquent for committing offenses amounting to rape or its equivalent (or an attempt or conspiracy to commit such an offense), as specified in the final guidelines.”

Consequently, it appears that only Rape, IDSI, and Aggravated Indecent Assault, as well as attempts or conspiracies to commit any of these offenses, would be required to be included in the juvenile delinquency provisions of any Pennsylvania implementing legislation in order to achieve compliance with respect to the application of SORNA to adjudications of delinquency. However, this determination will ultimately be made by the federal SMART office, in conjunction with the enactment of Pennsylvania’s implementing legislation.

Retroactivity

§113(d) of SORNA gives the Attorney General the authority to specify the applicability of the requirements of the Act to sex offenders convicted before the enactment of the Act or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with the initial registration requirements of the Walsh Act.

The Guidelines provide that SORNA’s requirements apply to all sex offenders, including those whose convictions predate the enactment of SORNA. Jurisdictions may not be able to identify all sex offenders who fall within the SORNA registration categories, where the predicate convictions predate the enactment of SORNA or the jurisdiction’s implementation of the SORNA standards, particularly where such offenders have left the justice system. A jurisdiction will be deemed to have “substantially implemented” the SORNA standards with respect to sex offenders whose predicate convictions predate the enactment of SORNA, or the implementation of SORNA in the jurisdiction’s program, if it registers the following sex offenders who remain in, or reenter, the system because:

- They are incarcerated or under supervision, either for the predicate sex offense or for some other crime;
- They are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction’s law; or
- They hereafter reenter the jurisdiction’s justice system because of conviction for some other crime (whether or not a sex offense).

IN RE:

IN THE COURT OF COMMON PLEAS OF

_____ COUNTY, PENNSYLVANIA

JUVENILE DIVISION

NO.

“SORNA COLLOQUY”

PREAMBLE TO SORNA COLLOQUY

The Sex Offender Registration and Notification Act (hereinafter “SORNA”), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), was signed into law by President Bush on July 27, 2006. SORNA does not create a federal sex offender registry. The Act was designed by the Federal Government to provide a comprehensive set of minimum standards for sex offender registration and notification in the United States. SORNA:

- Subjects certain juveniles to full registration and notification
- Establishes a new federal and criminal offense for failure to register under SORNA
- Broadens the range of offenses for which registration is required
- Requires registered sex offenders to register and keep their registration current in each jurisdiction in which they reside, work, and go to school.
- Expands the amount of personal information available to the public regarding registered sex offenders

The Colloquy that follows is based on the Final SORNA Guidelines, which were published by the Department of Justice on July 2, 2008. States failing to implement SORNA by July 27, 2009 will lose funding from a federal grant program, unless an extension of this deadline is granted by the Attorney General.

Pennsylvania has not passed its own version of SORNA. The Final SORNA Guidelines establish a floor, not a ceiling, for states to create their own versions of the law. Therefore, all of the registration requirements set forth below are the minimum requirements that can be implemented by the states if the states do not want to lose funding from the federal government.

SORNA creates federal and state criminal collateral consequences for failure to comply with registration requirements. According to the United States and Pennsylvania Supreme Courts, adult sex offenders who committed acts prior to the enactment of sex offender legislation could not appeal a case in which they entered a guilty plea because registration requirements did not constitute a criminal penalty. *Commonwealth v. Gaffney*, 557 Pa. 327, 733 A.2d 616 (1999); *Smith v. Doe*, 123 S.Ct. 1140 (2003). However, the Supreme Court has not decided if juveniles will have a right to appeal because they do not yet understand the collateral consequences of the SORNA registration requirements. It is therefore of the utmost importance that the requirements of SORNA as the law now stands are explained clearly and effectively to juvenile defendants prior to making admissions, because an appeal based on inability to understand the requirements may not be available. In addition, the Pennsylvania Rules of Professional Conduct require that an attorney ensures that his or her client is fully informed of their legal rights and the legal implications of their choice to make an admission. Rule 1.4(a)(1).

Juvenile's Initials: _____

SORNA COLLOQUY

1. Do you understand that if you are adjudicated a delinquent child because you have entered an admission to Rape, Involuntary Deviate Sexual Intercourse, or Aggravated Indecent Assault (Conspiracy or Attempt included) you could be subject to the requirements of SORNA including lifetime registration or registration for a minimum of twenty five (25) years if you maintain a "clean record" for that period of time?

2. Do you understand that your attorney has indicated that you wish to enter an admission to committing the following offense or offenses:

3. Do you understand that once you sign this form you are waiving your right to an evidentiary hearing to determine guilt or innocence, governed by Pa.R.J.C.P. 406 in juvenile court?

4. Do you understand that it is expected that the Commonwealth of Pennsylvania will adopt new laws in compliance with SORNA, and that these laws will determine specifically how the registration and notification provisions of SORNA will affect you?

5. Do you understand that, depending on the laws enacted in Pennsylvania, your registration and notification requirements under SORNA could mean:
 - a. You will be required to register as a "Sex Offender"? (A "sex offender", as defined by SORNA, is an individual who was 14 years of age or older at the time of the offense and has been adjudicated delinquent of certain sex offenses. **SORNA § 111(8)** requires that certain adjudications of delinquency are to be treated as "convictions" for purposes of SORNA's registration and notification requirements. See offenses specified in #1).

 - b. You will be required to register in the place where you were first "convicted" (adjudicated delinquent). You will also be required to register and keep your registration current in the place where you live, where you work and where you attend school.

 - c. After registering, your personal information will be provided to the following agencies and organizations:
 - national databases
 - law enforcement and supervision agencies such as probation offices
 - your employer
 - your school
 - any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993
 - every school and public housing agency in each area in which you reside, are an employee, or are a student
 - social services entities responsible for protecting minors in the child welfare system
 - volunteer organizations in which contact with the minors or other vulnerable individuals might occur
 - any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction

 - d. You will be required to appear **in-person** in at least one of the places where you are required to register to inform them of a change in your status. *A change in your status is defined by SORNA to include a change in your name, a change of residence, a change in the school that you attend, or a change of employment.*

Juvenile's Initials: _____

- e. Some of your personal information and your photograph will be published on Pennsylvania's public sex offender website, and on the National Sex Offender Registry ("NSOR"), that is maintained by the FBI. This means that:
- i. A great deal of your registry information and photograph will be made available on a publicly-accessible online database. *Your information will be accessible via the internet by classmates, neighbors, friends, and people all across the country.*
 - ii. The specific information available on the public websites will include:
 - your name
 - aliases
 - home address
 - work address
 - current and future school address
 - license plate and a description of any vehicle that you may own or operate
 - a physical description of you
 - the text of the sex offense(s) of which you are convicted (adjudicated delinquent)
 - other sex offense convictions
 - a current photograph
 - iii. The website could allow members of the public to request e-mail notification alerts when you or other registered offenders move into their neighborhoods or start employment or school within certain zip codes.
6. Do you understand that if you fail to register as required, you will be charged with a new offense for which you could be subject to imprisonment for at least a year?
7. Do you understand that you could be subject to a federal criminal penalty of up to ten (10) years of imprisonment if you travel to another state and fail to register in that location or fail to update your current registration to reflect your travel plans?
8. Do you have any questions about what we have discussed thus far?
9. Do you understand that is very unlikely that you will be able to withdraw this admission once it is accepted by the court?
- a. At this point do you still wish to enter an admission to committing the offense(s) of:
- _____
- _____?
- b. Do you understand that by signing this form you are indicating that you have had an adequate opportunity to review this form with your attorney, and that you understand the potential registration requirements and potential collateral consequences that may result from your admission to the offenses listed throughout this form?

Juvenile's Initials: _____

