

## SORNA Tier Classification Definitions

When placing offenses into tiers, “jurisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction.” 73 Fed. Reg. 38030, 38053. However, tier classifications that depend on victim age must be obeyed even for crimes whose *elements* do not specify that the victim must be below the threshold age if the victim was *in fact* below it. *Id.*

Tier I <i>15 years (10 with “clean record”<sup>1</sup>)</i>	Tier II <i>25 years</i>	Tier III <i>Lifetime</i>
<p>A sex offender other than a Tier II or Tier III sex offender. 42 U.S.C. § 16911(2).</p>	<p>Defined in 42 U.S.C. § 16911(3) as an offense punishable by imprisonment for more than one year and:</p> <p>A. Comparable to or more severe than the following offenses, when committed against a minor (or an attempt or conspiracy to commit them):</p> <ol style="list-style-type: none"> <li>1. Sex trafficking as defined in 18 U.S.C. § 1591;</li> <li>2. Coercion &amp; enticement under 18 U.S.C. § 2422(b);</li> <li>3. Transportation with intent to engage in criminal sexual activity under 18 U.S.C. § 2423(a); or</li> <li>4. Abusive <u>sexual contact</u> under 18 U.S.C. § 2244 committed against a minor 13 years old or older.<sup>2</sup></li> </ol> <p style="text-align: center;">OR</p> <p>B. That involves:</p> <ol style="list-style-type: none"> <li>1. Use of a minor in a sexual performance;</li> <li>2. Solicitation of a minor to practice prostitution; or</li> <li>3. Production or distribution of child pornography.</li> </ol> <p style="text-align: center;">OR</p> <p>C. That occurs after the offender becomes a Tier I offender.</p>	<p>Defined in 42 U.S.C. § 16911(4) as an offense punishable by imprisonment for more than one year and:</p> <p>A. Comparable to or more severe than the following offenses (or an attempt or conspiracy to commit them):</p> <ol style="list-style-type: none"> <li>1. Aggravated <u>sexual abuse</u> under 18 U.S.C. § 2241 or sexual abuse under 18 U.S.C. § 2242.<sup>3</sup></li> <li>2. Abusive sexual contact under 18 U.S.C. § 2244 (described in the tier II offense definition) when committed against a minor under 13 years old.</li> </ol> <p style="text-align: center;">OR</p> <p>B. Involve kidnapping of a minor (unless committed by a parent or guardian).</p> <p style="text-align: center;">OR</p> <p>C. That occurs after the offender becomes a Tier II offender.</p>

<sup>1</sup> To have a clean record as defined in 42 U.S.C. § 16915(b)(1), the person must:

1. Not be convicted of any subsequent offense for which imprisonment for more than 1 year may be imposed;
2. Not be convicted of any subsequent sex offense;
3. Successfully complete any period of supervised release, probation, and parole; and
4. Successfully complete an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

<sup>2</sup> Abusive sexual contact generally requires, among other things, that the defendant engage in or cause “sexual contact” with or by another person, defined in 18 U.S.C. § 2246(3) as the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

<sup>3</sup> “Sexual abuse” crimes generally require, among other things, the commission of a “sexual act,” defined in 18 U.S.C. § 2246 as contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus; penetration of the anal or genital opening of another by a hand, finger, or any object; or direct touching, not through the clothing, of the genitalia of a person under 16.

