



January 2016

SORNA Implementation Review Territory of Puerto Rico--Revised

The U.S. Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) would like to thank the Territory of Puerto Rico for the extensive work that has gone into its effort to substantially implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). The SMART Office has completed its review of Puerto Rico's SORNA substantial implementation packet and has found that the Puerto Rico has not substantially implemented SORNA.

In January, 2013, the SMART Office provided a Substantial Implementation Review to Puerto Rico. In December, 2014, Puerto Rico requested a new review, based on revised statutory provisions. Puerto Rico provided materials to the SMART Office in order to conduct this substantial implementation review. In the course of this review we have accessed or been provided with the relevant Puerto Rico statutes, policies, and public registry website information. Based upon this updated information and subsequent email correspondence, the SMART Office has reconsidered its earlier determination.

The following review updates the January 2013 report issued to Puerto Rico. Our review of the submitted materials follows the outline of the SMART Office Substantial Implementation Checklist-Revised, and contains 14 sections addressing the SORNA requirements. Under each section, we indicate whether Puerto Rico meets SORNA requirements of that section or deviates from the requirements in some way. In instances of deviation, we specify that the departure(s) from a particular requirement does not substantially dissuade the purpose of that requirement. In other words, Puerto Rico is encouraged to work toward rectifying deviations from requirements in order to achieve full implementation of SORNA, but this is not necessary for substantial implementation purposes.

This is an exhaustive review and meant to detail every area in which the territory has not met SORNA standards. We encourage you to review the information below, share it with relevant stakeholders in the territory, and get back in touch with us to develop a strategy to address these remaining issues.

I. Immediate Transfer of Information

SORNA requires that when an offender initially registers and/or updates his or her information in a jurisdiction, that the initial registration information or updated information be immediately sent to other jurisdictions where the offender has to register, as well as to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Puerto Rico meets all of the SORNA requirements in this section.

II. Offenses that Must Be Included in the Registry

SORNA requires that certain federal, military, and foreign offenses are included in a jurisdiction's registration scheme. In addition, SORNA requires that the jurisdiction capture certain sex offenses, both offenses from its jurisdiction and from other SORNA registration jurisdictions, in its registration scheme. SORNA also requires that certain adjudications of delinquency are included in a jurisdiction's registration scheme.

A. Puerto Rico Offenses

Puerto Rico includes all of its criminal offenses that are required to be registered by SORNA.

B. Federal Offenses

Puerto Rico includes all of the federal offenses that are required to be registered by SORNA.

C. Military Offenses

Puerto Rico includes all of the military offenses that are required to be registered by SORNA.

D. Territory Offenses

Puerto Rico includes all of the territory offenses that are required to be registered by SORNA.

E. Tribal Offenses

Puerto Rico includes all of the tribal offenses that are required to be registered by SORNA.

F. Juvenile Adjudications

Puerto Rico does not register any juveniles who have been adjudicated delinquent of a sex offense which would require registration under SORNA.

Because Puerto Rico does not register any juveniles adjudicate delinquent of a sex offense, Puerto Rico does not meet the SORNA requirements in this section.

III. Tiering of Offenses

SORNA requires that offenses be classified based on the nature of the offense of conviction. The SMART Office has reviewed all statutes identified in the substantial implementation submission package and has identified Puerto Rico's placement of these statutes within the SORNA three tier levels. Puerto Rico correctly places its statutes within at least the

minimum appropriate SORNA tiers, with the following exceptions (see the Appendix, “Puerto Rico Territory Statutes” for information about Puerto Rico’s classification of its offenders and associated registration requirements):

§3.2(g) (1989) 8 L.P.R.A. §632(g) Aggravated Domestic Violence

Depending on the charged elements for this offense, it might not require registration at all, or could require tier I, tier II, or tier III classification. If a conviction under §632g involves conduct which would constitute an otherwise registerable sex offense, the tier of registration for a §632g conviction should be the tier of that otherwise registerable sex offense.

§75 (2003) 8 L.P.R.A. §450c Abuse (when involving sexual abuse)

Depending on the charged elements for this offense, it might not require registration at all, or could require tier I, tier II, or tier III classification. If a conviction under §450c involves conduct which would constitute an otherwise registerable sex offense, the tier of registration for a §450c conviction should be the tier of that otherwise registerable sex offense.

These deviations do not substantially disserve the purposes of the SORNA requirements in this section.

IV. Required Registration Information

SORNA requires that the jurisdiction collect certain pieces of information from and for each offender that it registers, and requires that the jurisdiction keep that registration information, in a digitized form, in its registry.

SORNA requires sex offender registration information under 22 primary categories. Puerto Rico properly collects all of this information except for the following items:

1. Date of Birth: Puerto Rico does not capture any purported date of birth. An offender’s actual date of birth is captured.
2. Passports & Immigration Documents: Puerto Rico does not capture any passport or immigration document information during the course of the normal registration process.
3. Social Security Number: Puerto Rico does not capture any purported social security number. An offender’s actual social security number is captured.
4. Vehicle Information: In addition to the other required information, Puerto Rico also needs to register where an offender’s vehicles are permanently or frequently kept.

These deviations do not substantially disserve the purposes of the SORNA requirements in this section.

V. Where Registration is Required

SORNA requires that the jurisdiction register an offender if the jurisdiction is the one in which he is convicted or incarcerated. In addition, SORNA requires that the jurisdiction register offenders who reside, work, or attend school in the jurisdiction.

Puerto Rico meets all of the SORNA requirements in this section.

VI. Initial Registration: Generally

SORNA requires that when an offender is incarcerated within the jurisdiction, registration must occur before release from imprisonment for the registration offense. Similarly, when an offender is sentenced within the jurisdiction, but not incarcerated, SORNA requires that registration occur within three business days of sentencing. Finally, when an offender has been convicted, sentenced, or incarcerated in another jurisdiction (including federal or military court), the jurisdiction must register the offender within three business days of the offender establishing residence, employment, or school attendance within the jurisdiction. SORNA also requires that, during the initial registration process, the jurisdiction inform the offender of his registration duties and require the offender to acknowledge in writing that he understands those duties.

Puerto Rico meets all of the SORNA requirements in this section.

VII. Initial Registration: Retroactive Classes of Offenders

SORNA requires that each registration jurisdiction have a procedure in place to recapture three categories of sex offenders: those who are currently incarcerated or under supervision, either for the predicate sex offense or for some other crime; those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; and those who reenter the jurisdiction's criminal justice system because of a conviction for some other felony crime (whether or not it is a sex offense).

Puerto Rico meets all of the SORNA requirements in this section.

VIII. Keeping the Registration Current

SORNA requires that when a sex offender resides in a jurisdiction, he or she must immediately appear in-person to update his or her name, residence, employment, school attendance, and termination of residence. SORNA also requires that when an offender resides in a jurisdiction, he or she must immediately update any changes to his or her email addresses, internet identifiers, telephone communications, vehicle information, and temporary lodging information.

When an offender works in a jurisdiction, but does not reside or attend school there, SORNA requires that the offender immediately appear in-person to update employment-related information. When an offender attends school in a jurisdiction, but does not reside or work there, SORNA requires that the offender immediately appear in-person to update school-related information.

SORNA also requires that when an offender resides in a jurisdiction and intends to travel outside the United States, he or she must notify the residence jurisdiction at least 21 days in advance of such travel.

In addition, SORNA requires that when an offender notifies the jurisdiction of his or her intent to relocate to another country to live, work or attend school, that the jurisdiction do three things: immediately notify any other jurisdiction where the offender is either registered, or is required to register, of that updated information; immediately notify the United States Marshals Service, and immediately update NCIC/NSOR.

Puerto Rico does not require that any phone or internet identifier information be updated immediately upon any changes.

These deviations do not substantially disserve the purposes of the SORNA requirement in this section.

IX. Verification/Appearance Requirements

SORNA requires that offenders register for a duration of time, and make in-person appearances at the registering agency, based on the tier of the offense of conviction. SORNA requires that offenders register for a duration of time based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders register for 15 years, SORNA Tier II offenders register for 25 years, and SORNA Tier III offenders register for life.

SORNA also requires that offenders make in-person appearances at the registering agency based on the tier of the offense of conviction. Specifically, SORNA requires that SORNA Tier I offenders appear once a year, that SORNA Tier II offenders appear every six months, and that SORNA Tier III offenders appear every three months.

In addition, SORNA creates certain requirements under which a jurisdiction can allow an offender to have a reduced registration period.

A. Frequency of Registration

Puerto Rico classifies its offenders into three tiers: Tier I is required to register annually, tier II is required to register every six months, and Tier III is required to register every three months.

B. Duration of Registration

Puerto Rico classifies its offenders into three tiers: Tier I is required to register for 15 years, Tier II is required to register for 25 years, and Tier III is required to register for life.

C. Reduction of Registration Periods

Puerto Rico provides for the permitted reduction of registration periods in accordance with SORNA's standards for tier I offenders, allowing such offenders to reduce their duration of registration to ten years under certain circumstances.

D. Clean Record Requirement

Puerto Rico does not require that a sex offender successfully complete, *without revocation*, any period of supervised release, probation, or parole in order to qualify for a registration period reduction.

This deviation does not substantially disserve the purposes of the SORNA requirements in this section.

X. Public Registry Website Requirements

SORNA requires that each jurisdiction maintain a public sex offender registry website and publish certain registration information on that website. SORNA also requires that certain information not be displayed on a jurisdiction's public registry website.

The public registry website will not indicate when an offender had absconded and the SMART Office is unable to determine if school address information is posted.

These deviations does not substantially disserve the purposes of the SORNA requirements in this section.

XI. Community Notification

SORNA requires that each jurisdiction disseminate certain initial and updated registration information to particular agencies within the jurisdiction. In addition, SORNA requires that each jurisdiction also disseminate certain initial and updated registration information to the community.

Puerto Rico meets all of the SORNA requirements in this section.

XII. Failure to Register as a Sex Offender: Territory Penalty

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure of a sex offender to comply with their registration requirements.

Puerto Rico meets all of the SORNA requirements in this section.

XIII. When a Sex Offender Fails to Appear for Registration

SORNA requires that when a jurisdiction is notified that a sex offender intends to reside, be employed, or attend school in its jurisdiction, and that offender fails to appear for registration as required, that the jurisdiction receiving that notice inform the originating jurisdiction (the jurisdiction that provided the initial notification) that the sex offender failed to appear for registration.

Puerto Rico meets all of the SORNA requirements in this section.

XIV. When a Jurisdiction has Information that a Sex Offender may have Absconded

SORNA requires that when a jurisdiction has information that a sex offender may have absconded, that the jurisdiction take certain actions to investigate the absconder and notify various law enforcement agencies.

When Puerto Rico has information of a sex offender that might have absconded, the Puerto Rico Police start an investigation regarding the whereabouts of the sex offender. If the sex offender is not located, the police refer the case to the appropriate local prosecutor, and the case is also referred to the United States Marshals Service for investigation. Puerto Rico does not require that a warrant be issued for every absconder.

This deviation does not substantially disserve the purposes of the SORNA requirements in this section.

Conclusion

Puerto Rico has put forth exceptional work and effort in substantially implementing SORNA and enhancing its sex offender registration and notification system. However, there are provisions identified in this report that should be addressed in order for Puerto Rico to substantially implement SORNA.

We encourage you to contact the SMART Office once you have had the opportunity to review and discuss our findings and have developed a strategy for addressing and adopting the remaining provisions of SORNA.

Appendix: Puerto Rico Territory Statutes

The SMART Office has reviewed all of Puerto Rico's statutes identified in its substantial implementation submission package and has identified Puerto Rico's placement of these statutes within the tiering structure created in Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA). Unless indicated in the notes herein, the SMART office has not reviewed any statutes (or subsections) that were not included in the legislation provided by Puerto Rico.

In reviewing Puerto Rico's statutes, the SMART Office understands that Puerto Rico has three categories of registrants for purposes of its duration of registration and frequency of registration requirements.

- A tier I offender is required to register for 15 years with annual verification appearances;
- A tier II offender is required to register for 25 years with semi-annual verification appearances; and
- A tier III offender is required to register for life, with quarterly verification appearances.

SORNA Tier I Offenders

SORNA requires that Tier I offenders register for a minimum of 15 years and annually verify registration information. The following offenses listed in Puerto Rico's statutes would require, at a minimum, Tier I registration requirements under SORNA. Statutes are listed by their Act citation,¹ then their codified statutory reference.

§3.2(g) (1989) 8 L.P.R.A. §632(g) Aggravated Domestic Violence

Depending on the charged elements for this offense, it could not require registration at all, or could require tier I, tier II, or tier III classification. If a conviction under §632g involves conduct which would constitute an otherwise registerable sex offense, the tier of registration for a §632g conviction should be the tier of that otherwise registerable sex offense.

¹ The following designations are used:

(1974) Refers to Act No. 115 of July 22, 1974, as amended.
(1989) Refers to Act No. 54 of August 15, 1989, as amended.
(2003) Refers to Act 177-2003, as amended.
(2004) Refers to Act 149-2004, as amended.

§75 (2003) 8 L.P.R.A. §450c Abuse (when involving sexual abuse)

Depending on the charged elements for this offense, it could not require registration at all, or could require tier I, tier II, or tier III classification. If a conviction under §450c involves conduct which would constitute an otherwise registerable sex offense, the tier of registration for a §450c conviction should be the tier of that otherwise registerable sex offense.

§131(e) (1974) 33 L.P.R.A. §4172(e) Aggravated Restraint of Liberty

§168(e) (2004) 33 L.P.R.A. §4796(e) Aggravated Restriction of Freedom

SORNA Tier II Offenders

SORNA requires that Tier II offenders register for a minimum of 25 years and semi-annually verify registration information. The following offenses listed in Puerto Rico's statutes would require, at a minimum, Tier II registration requirements under SORNA.

§105 (1974) 33 L.P.R.A. §4067 Lewd and Indecent Acts (victim 16 or older)

This will be a tier I offense when the victim is 18 or older, and a tier II offense when the victim is 16 or 17

§111(a) (1974) 33 L.P.R.A. §4073(a) Pimping (minor victim)

§142(f) (2004) 33 L.P.R.A. §4770(f) Sexual Assault (deception)

§142(h) (2004) 33 L.P.R.A. §4770(h) Sexual Assault (incest)

§142(i) (2004) 33 L.P.R.A. §4770(i) Sexual Assault (trust relationship)

§144 (2004) 33 L.P.R.A. §4772 Lewd Acts

This will be a tier I offense when the victim is 18 or older, a tier II offense when the victim is 13-17, and a tier III offense when the victim is under 13.

§153(a) (2004) 33 L.P.R.A. §4781 Aggravated Trafficking

§157 (2004) 33 L.P.R.A. §4785 Production of Child Pornography

§158 (2004) 33 L.P.R.A. §4786 Possession and Distribution of Child Pornography

This will be a tier I offense when the offense of conviction involves only possession of child pornography.

§159 (2004) 33 L.P.R.A. §4787 Use of a Minor for Child Pornography

SORNA Tier III Offenders

SORNA requires that Tier III offenders register for life and quarterly verify registration information. The following offenses listed in Puerto Rico's statutes would require, at a minimum, Tier III registration requirements under SORNA.

§99 (1974) 33 L.P.R.A. §4061 Rape

§101 (1974) 33 L.P.R.A. §4063 Seduction

This will be a tier II offense when the victim is 16 or 17, and a tier III offense when the victim is under 16.

§103 (1974) 33 L.P.R.A. §4065 Sodomy

§105 (1974) 33 L.P.R.A. §4067 Lewd and Indecent Acts (victim under 16)

§122 (1974) 33 L.P.R.A. §4121 Incest (victim under 16)

This is a tier III offense when the victim is a minor and the charged conduct involves sexual intercourse. This will be a tier II offense when the victim is 16 or 17.

§137(a)(1974) 33 L.P.R.A. §4178(a) Kidnapping

§160 (1974) 33 L.P.R.A. §4243 Child Stealing

§134 (2004) 33 L.P.R.A. §4762 Kidnapping of Minors

§142(a-e, g) (2004) 33 L.P.R.A. §4770(a-e, g) Sexual Assault

§170(a) (2004) 33 L.P.R.A. §4798(a) Aggravated Kidnapping

Further Review

Puerto Rico registers the following offenses; however, those offenses, without the commission of (or the attempt or conspiracy to commit) a sexual offense, do not require registration under SORNA:

§76 (2003) 8 L.P.R.A. §450d Neglect (when involving sexual abuse)

§106 (1974) 33 L.P.R.A. §4068 Indecent Exposure

§110(a) (1974) 33 L.P.R.A. §4072(a) Pimping (adult victim)

§110(c) (1974)	33 L.P.R.A. §4072(c)	Pimping (trafficking, adult victim)
§113 (1974)	33 L.P.R.A. §4075	Distribution, etc., of Obscene Material
§114 (1974)	33 L.P.R.A. §4076	Obscene Exhibitions
§115 (1974)	33 L.P.R.A. §4077	Obscenity
§137(e) (2004)	33 L.P.R.A. §4765(e)	Child Corruption
§147 (2004)	33 L.P.R.A. §4775	Indecent Exposure
§148 (2004)	33 L.P.R.A. §4776	Indecent Proposal
§155 (2004)	33 L.P.R.A. §4783	Distribution, etc., of Obscene Material
§156 (2004)	33 L.P.R.A. §4784	Obscene Shows