

PREDATORS IN PARADISE: PUERTO RICO'S RECENT SEX OFFENDER PROBLEMS AND THE FEDERAL GOVERNMENT'S ILL SUITED SOLUTIONS

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INTRODUCTION

On July 27, 1981 Reve Walsh brought her six-year-old son, Adam, to a Sears department store in a local Hollywood, Florida mall.² While shopping, Mrs. Walsh allowed her son to explore the toy department.³ That was the last time Reve Walsh saw her son.⁴ Ottis Toole, partner of notorious serial killer Henry Lee Lucas, kidnapped Adam Walsh that day; and two weeks later, Adam's head was found by a fisherman in a canal over one hundred miles away.⁵ His body was never found.⁶

Devastated by the abduction and heinous murder of his six-year old son, John Walsh, Adam's father became committed to finding missing persons and hunting down child abductors.⁷ His dedication led John to become the host of "America's Most Wanted," a long-running American television program about tracking down fugitives who have committed egregious criminal offenses.⁸ The publicity that arose from Adam Walsh's murder marked a paradigm shift in the way the United States began to prioritize finding and protecting missing children and cracking down on sex offenders.⁹ This shift has led to the adoption of several state sex offender statutes and a complex body of progressive federal legislation aimed at

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² *Police: 1981 Killing of Adam Walsh Solved*, MSNBC (Dec. 16, 2008), http://www.msnbc.msn.com/id/28257294/ns/us_news-crime_and_courts/.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see also *America's Most Wanted*, FOX.COM (2011), available at http://www.amw.com/about_amw/john_walsh.cfm.

⁸ See *America's Most Wanted*, *supra* note 7.

⁹ See discussion *infra* Parts I, II.

increasing community notification, harshly penalizing offenders, preventing recidivism, and deterring offenders.¹⁰

Some sex offender registration statutes in the United States and its territories, however, have not had the desired effects. Puerto Rico, for example, has seen a recent influx of sex offenders migrating to the island due to its more relaxed sex offender legislation and less rigorous enforcement policies.¹¹ The Puerto Rican government's non-compliance with Title I of the Adam Walsh Act¹² and limited penalties for failing to register as a sex offender may have also contributed to this trend. This Note explores the history of sex offender legislation in the United States, the applicability of federal law to Puerto Rico as a United States territory, jurisdictional compliance with the Adam Walsh Act of 2006, and the current status of Puerto Rico's sex offender legislation in Puerto Rico. This Note also provides suggestions for how Puerto Rico should address the increasing number of sex offenders residing on the island without adopting harsh legislation that would violate sex offenders' rights. Specifically, by addressing whether Puerto Rico should have complied with Title I of the Adam Walsh Act of 2006 prior to the July 2011 deadline; whether Puerto Rico should adopt more stringent sex registration laws in the future; or whether Puerto Rico should sacrifice ten percent of its federal funding and retain Puerto Rico Public Law Number 266¹³—Puerto Rico's most current sex offender statute.

Part I of this Note will provide a broad overview of the history and developments of sex offender registration legislation in the United States since the 1940s. In Part II, the Note will discuss the most recent and comprehensive federal sex offender legislation to date—the Adam Walsh Act of 2006—in addition to jurisdictional compliance with the Adam Walsh Act since its enactment. In Part III, the Note will describe the history of Puerto Rico as a territory of the United States, the applicability of federal law to the island and Puerto Rico's two most recent and significant sex offender registration statutes: Puerto Rico Law Number 28¹⁴ and Puerto Rico Law Number 266.¹⁵ Part IV will address recent concerns about sex offenders relocating to Puerto Rico. Lastly, Part V will discuss the national and jurisdiction-specific concerns and opposition associated with complying with the Adam Walsh Act, including its arguably unconstitutional retroactive application, the consequences of an over-inclusive regime that would greatly harm juvenile offenders, and the economic impracticality of the Act. It also

¹⁰ *See id.*

¹¹ *See discussion infra* Part IV.

¹² Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16901 (2006) (most current federal sex offender legislation; enacted by President George W. Bush in 2006, and remains the most comprehensive federal sex offender legislation to date).

¹³ 2004 P.R. Laws No. 266.

¹⁴ 1997 P.R. Laws No. 28 (repealed 2004).

¹⁵ 2004 P.R. Laws No. 266.

provides brief recommendations as to how the Puerto Rican government should proceed with future sex offender legislation in Puerto Rico.

I. THE DEVELOPMENT OF SEX OFFENDER REGISTRATION LAWS IN THE UNITED STATES

In 1947, California created the nation's first sex offender registration statute requiring convicted sex offenders—individuals who committed specific defined sexual offenses—to register with the local police.¹⁶ By 1985, only five states had adopted sex offender registration laws, requiring registration for law-enforcement monitoring purposes.¹⁷ It was not until the early 1990s that sex offender registration laws became more numerous—roughly half of all states adopted sex offender registration statutes—and comprehensive in the wake of several horrific sexual attacks on children.¹⁸ Episodes of brutal rapes and murders of two young boys in Washington in 1989 and 1990 led to emphatic public outcry and subsequent statewide legislation.¹⁹ As one of the first community notification statutes of its time, the new Washington statutes required law enforcement agencies to provide the public with information about registered sex offenders within the state of Washington.²⁰ The effect of the Washington media publicizing the gruesome murders, the new Washington sex offender legislation, and ongoing instances of sexual attacks throughout the country sparked the beginning of a national movement to protect children from sex offenders.²¹

A. *Jacob Wetterling Act*

In 1989, a masked gunman abducted Jacob Wetterling, an eleven-year-old boy, while he, his brother, and a friend rode their bicycles home after renting a video at the local convenience store.²² The gunman ordered the three boys to get off of their bikes, lie on the ground, and tell him their respective ages.²³ Afterwards, the gunman ordered Jacob's brother and their friend to run into the woods, warning them that if they turned around for any reason, he would shoot

¹⁶ State of California Department of Justice, Office of the Att'y Gen., *Sex Offender Registration and Exclusion Information*, MEGANS LAW, available at <http://www.meganslaw.ca.gov/sexreg.aspx?lang=ENGLISH>.

¹⁷ *People v. Monroe*, 215 Cal. Rptr. 51 (Cal Ct. App. 1985).

¹⁸ See Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration And Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163, 164 (2003) (citing Michele L. Earl-Hubbard, *The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U. L. REV. 788, 790 n.7 (1996).

¹⁹ Garfinkle, *supra* note 18, at 165.

²⁰ *Id.*; see also WASH. REV. CODE § 4.24.550(1) (disseminates sex-offender information through a website).

²¹ Garfinkle, *supra* note 18, at 165.

²² Jacob's Story, JACOB WETTERLING RESOURCE CTR., available at <http://www.jwrc.org/WhoWeAre/History/JacobsStory/tabid/108/Default.aspx> (last visited Jan. 18, 2011).

²³ *Id.*

them.²⁴ By the time the boys ran into the woods and looked back from a safe distance, Jacob and his abductor were gone.²⁵ To this day, the fate of Jacob Wetterling and his abductor remain unknown.²⁶ Jacob's abduction, compounded with the release of multiple sex offenders during that time period in Minnesota, led to public outcry demanding greater protections for families against sexual predators.²⁷ The Minnesota state legislature responded by creating the original Jacob Wetterling Act, which mandated a sex offender registry for the benefit of law enforcement agencies and to ease the fears of the public.²⁸

On a national scale, several years later, the United States Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as part of the Federal Violent Crime Control and Law Enforcement Act.²⁹ The federal version of the Jacob Wetterling Act of 1994 required every state, territory, and commonwealth to create a sex offender registry or consequentially suffer a reduction in federal Justice Assistance Grant ("JAG") funding.³⁰ The Jacob Wetterling Act required any "person who is convicted of a criminal offense against a victim who is a minor or is convicted of a sexually violent offense to register" their current address with the appropriate authorities.³¹ The other distinguishing characteristic of the Jacob Wetterling Act was that it gave law enforcement officials the *discretion* to "release relevant information that is necessary to protect the public" about the sex offenders who are required to register.³² Though law enforcement officials were given the discretion to disseminate information pertaining to registered sex offenders, Americans remained unsatisfied with the new sex offender safeguards and pushed for more comprehensive legislation on a national scale.³³

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Steven J. Costigliacci, *Protecting Our Children From Sex Offenders: Have We Gone Too Far?*, 46 FAM. CT. REV. 180, 183 (2008).

²⁸ See *id.*

²⁹ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, 42 U.S.C. § 14071 (repealed 2006); PUB. L. NO. 103-322, 108 Stat 1796 (1994) [hereinafter Wetterling Act].

³⁰ See Wetterling Act, *supra* note 29, § 14071(f)(2)(A); see also 42 U.S.C. § 3756 ("JAG" refers to funding from the Edward Byrne Memorial Justice Assistance Grant Program that provides states, territories, and the Indian Nations with an annual grant to fund anti-drug programs and law enforcement initiatives).

³¹ Wetterling Act, *supra* note 29, § 14071(a)(1)(A).

³² See *id.* § 14071(d)(3) (emphasis added).

³³ See Daniel J. Schubert, *Challenging Ohio's Adam Walsh Act: Senate Bill 10 Blurs The Line Between Punishment and Remedial Treatment of Sex Offenders*, 35 U. DAYTON L. REV. 277, 280-81 (2010).

B. *Megan's Law*

In 1994, a seven-year-old girl named Megan Kanka was abducted, raped, and murdered by her neighbor Jesse Timmendequas.³⁴ Timmendequas was a two-time convicted sex offender who lured Megan into his home with the promise that she could play with his puppy.³⁵ In response to Megan's tragic death in 1994, New Jersey legislators faced immense pressure from the community to provide a form of notice to alert the public of convicted sex offenders residing in their neighborhoods.³⁶ The New Jersey legislature passed "Megan's Law" shortly thereafter. Due to the national attention that Megan's rape and murder had received, Congress decided that the discretionary prerogative of law enforcement agencies to disseminate information about sex offenders to the public was insufficient to protect public safety interests.³⁷ As a result, the Jacob Wetterling Act was amended to incorporate the improvements of New Jersey's Megan's Law in 1996.³⁸

This amendment to the Jacob Wetterling Act created an affirmative duty for law enforcement agencies, requiring the dissemination of information concerning sex offender registration to the public.³⁹ Rather than *permitting* law enforcement agencies to use complete discretion, the 1996 amendment dictates that a "State law enforcement agency and any local law enforcement agency authorized by the State Agency *shall* release relevant information that is necessary to protect the public concerning a specific person required to register under this section."⁴⁰ Even as the Jacob Wetterling Act represented an enormous improvement in the realm of community notification of sex offenders, the next wave of federal legislation—the Adam Walsh Act—would trump all previous sex offender legislation to date.

II. MODERN FEDERAL SEX OFFENDER LEGISLATION IN THE UNITED STATES

A. *Adam Walsh Act: Creating Three Tiers of Sex Offenders*

After Adam's murder in 1981, the public and political attention surrounding sex offender legislation, and the societal emphasis placed on protecting American children, led to the creation of the Adam Walsh Act enacted on July 27, 2006.⁴¹ To date, the Adam Walsh Act remains the most recent and thorough development in federal sex offender legislation in history.⁴² The Adam Walsh Act is an expansive

³⁴ *Id.*

³⁵ *Id.* at 281.

³⁶ *See id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See id.* at 280-81.

⁴⁰ H.R. REP. NO. 104-555 (1996) (emphasis added).

⁴¹ 42 U.S.C. § 16901.

⁴² Robin Morse, *Federalism Challenges to the Adam Walsh Act*, 89 B.U. L. REV. 1753, 1754 (2009) (quoting 152 CONG. REC. S8012 (daily ed. July 20, 2006) (statement of Sen. Hatch) "the most

revision of its predecessors, and it requires widespread dissemination of sex offender information to the American public through the Internet. Indeed, Section 118 of the Act states that “each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry.”⁴³ By mandating that all jurisdictions permit public users to obtain information about nationally registered offenders through a single Internet inquiry, communities can efficiently monitor individuals who may be potential threats in their neighborhood.⁴⁴

The Adam Walsh Act also expanded the definition of sex offense,⁴⁵ and it separates sex offenders into multiple tiers—depending on the type of sexual offense committed—for the purpose of defining applicable penalties.⁴⁶ A sex offender is defined as an “individual who was convicted of a sex offense,”⁴⁷ and sex offenders are split into three separate tiers.⁴⁸ Each tier classification, with its own criteria and penalties, is based solely on the type of sexual acts committed by the offender and does not allow for individualized assessment of the offender by the judiciary.⁴⁹

Under the Adam Walsh Act, Tier I sex offenders are defined as offenders not characterized as Tier II or Tier III offenders, and they are considered lower risk offenders than Tier II or Tier III offenders.⁵⁰ A Tier II offender is a recidivist sex offender “whose offense is punishable by imprisonment for more than 1 year.”⁵¹ The list of possible Tier II offenses includes “sex trafficking . . . coercion and enticement . . . transportation with intent to engage in criminal sexual act[s],” and/or “abusive sexual contact.”⁵² There are certain pre-requisites that must be met before an individual is labeled a Tier II offender. Tier II offenders must have used “a minor in a sexual performance; [] solicit[ed] a minor to practice prostitution;” or produced or distributed child pornography.⁵³ Lastly, Tier III offenders commit the

comprehensive child crimes and protection bill in our nation’s history”).

⁴³ 42 U.S.C. § 16918(a) (2006).

⁴⁴ *Id.*

⁴⁵ 42 U.S.C. § 16901(8). The definition of sex offense was expanded in commemoration of Amie Zyla who was sexually assaulted when she was eight years old and has dedicated her life to advocating for child victims of sexual abuse. Under § 16911(5)(A), a sex offense is defined as:

(i) a criminal offense that has an element involving a sexual act or sexual contact with another; (ii) a criminal offense that is a specified offense against a minor; (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110; (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

⁴² U.S.C. § 16911(5)(A) (2006).

⁴⁶ 42 U.S.C. § 16911(5)(A).

⁴⁷ *Id.* § 16911(1).

⁴⁸ *Id.*

⁴⁹ *See generally id.*

⁵⁰ *Id.*

⁵¹ *Id.* § 16911(3).

⁵² 42 U.S.C. § 16911(3)(A).

⁵³ *Id.* § 16911(3)(B).

most severe of the associated crimes, including “conspiracy to commit” sexual crimes, “aggravated sexual abuse or sexual abuse. . . abusive sexual contact. . . [including] kidnapping of a minor.”⁵⁴

Although compliance with the Adam Walsh Act, like the Jacob Wetterling Act before it, is not mandatory, jurisdictions that choose to comply will subject themselves to federal preemption with regards to many of their local sex offender registration laws.⁵⁵ The National Conference of State Legislatures (“NCSL”) even noted that the Adam Walsh Act “preempt[s] many state laws and create[s] an unfunded mandate for states” to abide by rigidly and without grants or resources.⁵⁶

B. Sex Offender Registration and Notification Act (SORNA)

Title I of the Adam Walsh Act, referred to as the Sex Offender Registration and Notification Act (“SORNA”), mandates standardized sex offender registration requirements throughout the country while calling for greater sex offender accountability and economic penalties for states and territories that fail to comply.⁵⁷ SORNA section 113(c) states that “[a] sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) . . . and inform that jurisdiction of all changes in the information required. . . .”⁵⁸ The required information that sex offenders must provide includes their name, social security number, home address, work or school address, license plate number, and anything else that the Attorney General deems fit.⁵⁹ All of this information—with the exception of the offender’s social security number—is publicly accessible through each state or territory’s Internet sex offender registry site.⁶⁰

Additionally, there are different requirements imposed on offenders based on their categorization in SORNA’s three-tier system. For example, all sex offenders must register in person, though the specific time span for each tier of offenders to register varies.⁶¹ Tier I offenders must provide the aforementioned personal

⁵⁴ *Id.* § 16911(4).

⁵⁵ See *Adam Walsh Policy*, Aug. 2011, NATIONAL CONF. OF STATE LEGISLATURES, available at <http://www.ncsl.org/StateFederalCommittees/LawCriminalJustice/20082009PolicesLawandCriminalJusticeComm/tabid/16191/Default.aspx#AdamWalsh> (last visited Jan. 18 2011). Article VI, cl. 2 of the Constitution states that the laws of the United States “shall be the supreme Law of the Land . . . every state shall be bound hereby, anything in the constitution or laws of any state to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. In light of the “Supremacy Clause,” state laws deemed in conflict with federal legislation are considered null, and without effect. See *Altria Group Inc. v. Good*, 555 U.S. 70 (2008).

⁵⁶ See *Adam Walsh Policy*, *supra* note 55.

⁵⁷ See Jennifer Boyter, *SORNA and Sex Offender Policy in the States*, KNOWLEDGE CTR. (Jan. 15, 2010), <http://knowledgecenter.csg.org/drupal/content/sorna-and-sex-offender-policy-states>.

⁵⁸ 42 U.S.C. § 16913(c) (2006).

⁵⁹ 42 U.S.C. § 16914 (2006).

⁶⁰ See 42 U.S.C. § 16918 (2006).

⁶¹ 42 U.S.C. § 16915a (2008); 42 U.S.C. § 16916 (2006).

information annually for fifteen years; Tier II offenders must provide this information every six months for twenty-five years; and Tier III offenders must provide this information every three months for the duration of their lives.⁶² Sex offenders who maintain a “clean record” for extended periods of time can have the annual registration periods reduced; however, the clean record provisions require offenders to abstain from engaging in deviant criminal behavior for substantial probationary periods.⁶³ Should an offender from any tier fail to comply, he or she can be charged with failure to register and will face criminal penalties in the form of fines and imprisonment for no more than ten years.⁶⁴

While sex offenders must provide extensive personal information under SORNA, jurisdictions that risk losing funding for noncompliance with SORNA have obligations as well. Under SORNA, every jurisdiction that seeks compliance with SORNA must provide the following items:

1. A physical description of the sex offender
2. Provisions of the law the sex offender violated
3. The criminal history of the sex offender
4. A current photograph of the sex offender
5. Fingerprints of the sex offender
6. A DNA sample from the offender
7. A copy of the sex offender’s valid license or identification
8. Any other information required by the Attorney General.⁶⁵

The extensiveness and sheer volume of information required by SORNA is one of many more pressing and grave concerns that have resulted in the jurisdictional compliance issues discussed below.

1. Jurisdictional Compliance with SORNA

Due to the significant overhaul in federal sex offender legislation generated by SORNA and the Adam Walsh Act, Congress determined that the various jurisdictions would require guidance to ensure SORNA’s implementation.⁶⁶ SORNA defines jurisdictions as any of the following: a U.S. State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and any fully recognized Indian tribe.⁶⁷ To assist these jurisdictions in implementing SORNA, Congress created the Office of Sex Offender Sentencing Monitoring Apprehension Registering and Tracking (“SMART”) to provide information, SORNA implementation guidelines,

⁶² 42 U.S.C. § 16916.

⁶³ 42 U.S.C. § 16915(b)(1).

⁶⁴ 18 U.S.C. § 2250(a) (2006).

⁶⁵ 42 U.S.C. § 16914(b) (2008).

⁶⁶ See *Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking*, OFFICE OF JUSTICE PROGRAMS [hereinafter SMART], <http://www.ojp.usdoj.gov/smart/index.htm>.

⁶⁷ 42 U.S.C. § 16911(10) (2006).

and notifications about changes in existing sex offender legislation, for both the public and the states.⁶⁸

To further aid jurisdictions hoping to implement SORNA requirements successfully, SMART created the Final Guidelines in 2008 to clarify the obligations of the jurisdictions that chose to comply.⁶⁹ Compliance requires each jurisdiction to meet the “substantial implementation” standard set forth in the Adam Walsh Act and explained by SMART in the Final Guidelines.⁷⁰ Though SMART provides some discussion as to the definition of “substantial implementation,” the definition of the standard is not completely clear.⁷¹ SMART describes “substantial implementation” as a standard that allows for “limited latitude to approve measures that do not exactly follow the provisions of SORNA or the guidelines, where the departure from a SORNA requirement does not substantially disserve the requirement’s objective.”⁷² In other words, though SMART has declared the “substantial implementation” standard as the minimum standard for compliance with SORNA, Congress has given the states, United States territories, and the Indian tribes limited leeway to comply by any means they so choose without detracting from SORNA’s ultimate goal.⁷³ Specifically, the Final Guidelines note that the minimum standards “[are] not intended to preclude or limit jurisdictions’ discretion to adopt more extensive or additional registration and notification requirements.”⁷⁴

According to the Adam Walsh Act, each jurisdiction was to implement the minimum SORNA requirements before July 27, 2009, with the possibility of two additional one-year extensions if the Attorney General so authorized.⁷⁵ When it became apparent that most jurisdictions would not meet the 2009 deadline due to reasons that will be discussed in Part III of this Note, the Attorney General authorized the two, one-year extensions.⁷⁶ Five years and two extensions later, many jurisdictions still have not complied with SORNA’s federal mandate.⁷⁷

In April 2009, SEARCH, the National Consortium for Justice Information and Statistics, created a survey to determine which jurisdictions had already complied with SORNA’s requirements, and which jurisdictions had yet to comply

⁶⁸ See generally SMART, *supra* note 66.

⁶⁹ See The Nat’l Guidelines for Sex Offender Registration and Notification SORNA-Final Guidelines, SMART: Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking, OFFICE OF JUSTICE PROGRAMS (July 2008), <http://www.ojp.usdoj.gov/smart/pdfs/finalsomguidelines.pdf>.

⁷⁰ *Id.* at 75.

⁷¹ See *id.*

⁷² *Id.*

⁷³ See *id.*

⁷⁴ *Id.* at 7.

⁷⁵ 42 U.S.C. § 16924 (2006).

⁷⁶ See discussion *infra* Part III.

⁷⁷ See discussion *infra* Part III.

with the June 2008 Final Guidelines.⁷⁸ The 2009 SEARCH survey explained that, as of April 2009, none of the jurisdictions had complied with SORNA's requirements and would likely not meet the July 27, 2009 deadline.⁷⁹ A number of jurisdictions—Alabama, District of Columbia, Pennsylvania, Puerto Rico, Ohio, Utah, and the Virgin Islands—did not respond to the survey while others, like Minnesota and Montana, declined to comment on the status of sex offender legislation in their state.⁸⁰ The 2009 SEARCH survey also asked a series of questions aimed at discovering which jurisdictions required the optional one-year extension for compliance that the Attorney General may provide, as well as the jurisdictions' rationale, if any, for non-compliance.⁸¹ The most prevalent reasons for non-compliance with SORNA that were listed among the forty-five jurisdictions that responded to the survey included cost of implementation, in-person registration, juvenile offender registration, and retroactivity.⁸²

In August 2010, SMART compiled a list of all jurisdictions seeking a second extension after failing to meet the July 27, 2009 original deadline and the July 27, 2010 extension deadline.⁸³ As of December 14, 2011, the Justice Department reported that only fifteen states, two territories, and sixteen tribes have substantially implemented SORNA.⁸⁴

As one of the three remaining United States territories that have failed to adopt SORNA, it is beneficial to understand the current status of Puerto Rico's sex offender legislation. First however, a brief synopsis of the island's history and development as a commonwealth and "unincorporated" territory is essential for a

⁷⁸ SEARCH: The National Consortium for Justice Information and Statistics, *SEARCH Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA)* (Apr. 2009) [hereinafter SEARCH], available at <http://www.search.org/files/pdf/SORNAStateComplianceSurvey2009.pdf>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ SORNA Extensions Granted, *SMART: Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking, OFFICE OF JUSTICE PROGRAMS* (Aug. 8, 2010) [hereinafter SORNA Extensions Granted], available at <http://www.ojp.usdoj.gov/smart/pdfs/SORNAExtensionsGranted.pdf>.

⁸⁴ Nat'l Conf. of State Legislatures, *Adam Walsh Child Protection and Safety Act* (Jan. 3, 2012), <http://www.ncsl.org/?tabid=12696>. As of December 14, 2011, the following jurisdictions were deemed in compliance with SORNA:

Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, South Carolina, South Dakota, Tennessee and Wyoming, and the United States territory of Guam and the Commonwealth of Northern Mariana Islands have been found by the SMART office to be in compliance. Tribes of the Comanche Nation, the Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of Warm Springs, Confederated Tribes and Bands of the Yakama Nation, Grand Traverse Band of Ottawa and Chippewa Indians, Iowa Tribe of Oklahoma, Kootenai Tribe of Idaho, Little Traverse Bay Bands of Odawa Indians, Miccosukee Tribe of Indians of Florida, Nottawaseppi Huron Band of the Potawatomi, Ohkay Owingeh, Osage Nation, Pascua Yaqui Tribe, Poarch Band of Creek Indians, Pueblo of Isleta, Tohono O'odham Nation, and Upper Skagit Indian Tribe.

later discussion of Puerto Rico's sex offender legislation and the recent problems in Puerto Rico.

III. THE HISTORY OF PUERTO RICO'S GOVERNANCE, THE INADEQUACY OF PUERTO RICO'S SEX OFFENDER LAWS, AND ITS FAILURE TO COMPLY WITH SORNA

A. *The Acquisition of Puerto Rico by the United States and the Formation of Puerto Rico's Government*

For centuries after its discovery and colonization by Spain, the island of Puerto Rico remained a Spanish colony until the United States gained control of Puerto Rico as a spoil of the Spanish-American War in 1898.⁸⁵ At the war's conclusion, the United States officially gained control of Puerto Rico as a territory after negotiating and signing the Treaty of Paris.⁸⁶

Following the creation of the Treaty of Paris, Puerto Rico increasingly gained freedom to develop its own government, though questions concerning the constitutional restraints on Puerto Rico and its identity as a territory remained.⁸⁷ In 1900, Congress passed the Organic Act of 1900, also known as the "Foraker Act," which allowed the President of the United States to appoint a governor and her cabinet to govern the island of Puerto Rico.⁸⁸ The Foraker Act also declared the inhabitants of Puerto Rico "citizens of Puerto Rico" despite the island's status as a colony and not a sovereign nation.⁸⁹

The unsettled status of Puerto Rico as a United States colony, and not as an incorporated state, led to a national debate as to whether or not the full strength of federal laws applied to United States territories, specifically Puerto Rico. From 1901 to 1905, a series of opinions known as the "Insular Cases" attempted to bring clarity to inquiries about the applicability of federal laws and the United States Constitution to United States Territories.⁹⁰ Unfortunately, the "Insular Cases" muddled the conversation surrounding the applicability of federal law to Puerto Rico;⁹¹ however the Supreme Court, in *Downes v. Bidwell*, ultimately determined

⁸⁵ See *History*, WELCOME TO PUERTO RICO (Jan. 3, 2012), <http://www.topuertorico.org/history4.shtml>.

⁸⁶ *Id.* (as a result of the Treaty of Paris, signed on Dec. 10, 1898, "Spain renounced all claim to Cuba, ceded Guam and Puerto Rico and its dependent islets to United States, and transferred sovereignty over the Philippines to the United States for \$20,000,000.").

⁸⁷ See Mónica Matos-Desa, *Second Class Citizens: The Case Against Unequal Military Healthcare Benefits for Puerto Rican Veterans*, 16 CARDOZO J. L. & GENDER 291 (2010).

⁸⁸ Ronald Blackburn-Moreno, *Brief Chronology of Puerto Rico*, ASPIRA ASSOCIATION, INC. 21 (Feb. 2001), available at www.aspira.org/files/user/u1/Chronology_of_Puerto_Rico.pdf

⁸⁹ *Id.*

⁹⁰ T. Alexander Aleinikoff, *Puerto Rico and The Constitution: Conundrums and Prospects*, 11 CONST. COMM. 15, 24-27 (1994); for more on the "Insular Cases," see *De Lima v. Bidwell*, 182 U.S. 145 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Hawaii v. Mankichi*, 190 U.S. 197 (1903); *Dorr v. United States*, 195 U.S. 138 (1904).

⁹¹ Aleinikoff, *supra* note 90, at 26.

that Puerto Rico was an “unincorporated” territory not controlled with the expectation of annexation into the United States and as such did not command all of the protections of federal law and the Constitution.⁹²

B. Citizenship and Later Developments in Modern Puerto Rican Government

In 1917, the Jones Act finally extended United States citizenship and a bicameral governmental system to the people of Puerto Rico.⁹³ Though it had become clear that citizenship sealed the binding applicability of federal law on the government and the inhabitants of Puerto Rico, the Supreme Court in 1922 held that Puerto Ricans were not entitled to all of the protections of the Constitution.⁹⁴ In *Balzac v. People of Puerto Rico*, Justice Taft held that, despite Puerto Ricans’ United States citizenship, nothing in the Jones Act of 1917 would allow the Court to infer that Congress intended Puerto Rico to become an incorporated territory, and thus Puerto Ricans were not entitled to the full force of the protections granted by the United States Constitution.⁹⁵ Furthermore, the Court specified that the only rights guaranteed to Puerto Ricans by the Constitution were fundamental rights, including protection against deprivation of “life, liberty, or property without due process of law.”⁹⁶

Despite the seemingly contradictory withholding of constitutional protections, Puerto Ricans continued to gain governing autonomy as the years progressed. Several decades later, in 1947, Puerto Ricans were granted the ability to hold public elections for their own governor.⁹⁷ Subsequently in 1950, Congress created Public Law 600 calling for the “organization of a constitutional government by the people of Puerto Rico.”⁹⁸ Finally, the United States Congress formally approved the first Constitution of Puerto Rico in 1952.⁹⁹

Though the Puerto Rican government has maintained some level of autonomous control over the island’s governance since the 1950s, the United States retains power and control over Puerto Rico. Article IV, Section 3 of the United States Constitution, known as the Territory Clause, states that “the Congress shall have power to dispose of and make all needful rules and regulations respecting the

⁹² *Id.* at n.40. See *Downes*, 182 U.S. at 247.

⁹³ See Aleinikoff, *supra* note 90, at 18.

⁹⁴ *Balzac v. People of Puerto Rico*, 258 U.S. 298, 313 (1922) (Jesus Balzac, a newspaper editor, was charged with two counts of criminal libel, which was a misdemeanor under Puerto Rican law. According to Puerto Rican law at the time, criminal defendants were not entitled to a trial by jury, and Balzac claimed that the law violated his Sixth Amendment Rights. The Supreme Court held that as an unincorporated territory, Puerto Ricans were not entitled to the full protection of the Constitution but rather only to certain “fundamental rights”).

⁹⁵ *Balzac*, 258 U.S. at 313.

⁹⁶ *Id.*

⁹⁷ Aleinikoff, *supra* note 90, at 18.

⁹⁸ *Id.*

⁹⁹ *Id.*

Territory or other Property belonging to the United States.”¹⁰⁰ While the current applicability of the Territory Clause to Puerto Rico has become a concern, courts have overwhelmingly held that the United States has plenary power over Puerto Rico similar to the way the federal government has power over the states.¹⁰¹ One author suggests that despite Puerto Rico’s self-governance, Congress can still control Puerto Rico by adopting laws through the enumerated powers listed in Article I Section 8 of the Constitution, for example the Commerce Clause.¹⁰² With regard to the applicability of constitutional protections to Puerto Ricans today, the holding in *Balzac*, though still good law, is no longer controlling, as the Bill of Rights has been extended to Puerto Rico through Fourteenth Amendment incorporation, statutes, and “judicial expansion.”¹⁰³

The influence of the United States on the governance of Puerto Rico is undeniable, and as such, Puerto Rico followed the trend of creating sex offender legislation in the 1990s. After the amended Jacob Wetterling Act was passed in 1996,¹⁰⁴ Puerto Rico created the first of only two sex offender statutes in its history: Puerto Rico Public Law Number 28.¹⁰⁵ Several years later, prior to the creation of the Adam Walsh Act of 2006, the Puerto Rican legislature enacted a revised version of Puerto Rico Public Law Number 28, entitled Puerto Rico Public Law Number 266, in an attempt to bolster protections for the inhabitants of Puerto Rico against the threat of sex offenders.¹⁰⁶

C. Puerto Rico's Sex Offender Statutes

1. Puerto Rico Public Law Number 28

Prior to adopting Puerto Rico’s most recent sex offender legislation, Puerto Rico passed Public Law Number 28 (“Law 28”) on July 1, 1997 to comply with the amended Jacob Wetterling Act of 1996 and to avoid a decrease in federal funding.¹⁰⁷ Law 28 established the creation of a sex offender registry for Puerto Rico and mandated certain rules for registrants.¹⁰⁸ Specifically, Law 28 required sex offenders to provide their name, aliases, date of birth, home address, driver’s license number, fingerprints, photograph, social security number, and any “other essential data” within forty-five days of a court order.¹⁰⁹ Law 28 further complied with the Wetterling Act by creating an affirmative duty for the commonwealth’s

¹⁰⁰ U.S. CONST. art. IV, § 3.

¹⁰¹ Aleinikoff, *supra* note 90, at 19.

¹⁰² *Id.*

¹⁰³ *Id.* at 28.

¹⁰⁴ Wetterling Act, *supra* note 29, § 14071.

¹⁰⁵ 1997 P.R. Laws No. 28 (repealed 2004).

¹⁰⁶ 2004 P.R. Laws No. 266.

¹⁰⁷ 1997 P.R. Laws No. 28.

¹⁰⁸ *Id.*

¹⁰⁹ 1997 P.R. Laws No. 28 § 4(a).

Criminal Justice Information System to make available a sex offender's registry information to various agencies.¹¹⁰ Each sex offender's information must be made available to law enforcement agencies, public agencies, federal or state government agencies, as well as any public or private interest that can explain its reasoning for requesting the information in writing.¹¹¹

While Law 28 was Puerto Rico's first major attempt at sex offender legislation, its specific detailed registration requirements and criminal penalties marked a drastic improvement in governmental protections against sex offenders and recidivism. However, the penalties for failing to register are not as severe as one would expect. Critics first note that in Puerto Rico, sex offenders who fail to register within the allocated time frames incur a misdemeanor violation and face up to \$500 in fines and imprisonment up to six months.¹¹² Secondly, Law 28 only required a registrant's information to be kept for a ten-year period, at which point, if recidivism had not occurred, the information would be eliminated from the database.¹¹³ Lastly, Law 28 only required life long monitoring for those offenders classified in the statute as "dangerous sex offenders."¹¹⁴

According to Law 28, "dangerous sex offender" is defined as an offender who committed a sexual offense that warrants evaluation by two medical professionals "specializ[ing] in the science of human behavior and sexual problems" because of the "nature of the sexual offense or [its] violent circumstances."¹¹⁵ Only in the case of dangerous offenders does a sex offender in Puerto Rico have an obligation to register for the duration of their lives with the possibility to petition the court and become exempt from registering ten years from the date the offender was incarcerated.¹¹⁶ These provisions pale in comparison to those set forth in the current Adam Walsh Act of 2006.¹¹⁷ At a minimum, the "dangerous sexual offender" status created in Law 28 as the most serious classification of sex offender is incomparable to the scope and stringency of the Tier III offender classification under the Adam Walsh Act.¹¹⁸ The classification of Tier III offenders in the Adam Walsh Act relies on the violation of specific statutorily defined criminal offenses as opposed to the subjective determination of "dangerous offenders" by medical professionals in Law 28.¹¹⁹ Furthermore, the possibility for maximum risk offenders to receive an abrogation of their registration obligations under the Adam Walsh Act is far less likely, and the actual reduction in

¹¹⁰ 1997 P.R. Laws No. 28 § 7.

¹¹¹ *Id.*

¹¹² 1997 P.R. Laws No. 28 § 9.

¹¹³ *Id.* § 5.

¹¹⁴ *Id.* § 6.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See generally* 42 U.S.C. §16915 (2006).

¹¹⁸ 1997 P.R. Laws No. 28 § 6.

¹¹⁹ *See* 42 U.S.C. §16915 (2006).

obligations is less generous. In contrast to the ten-year petition option listed in Law 28, the Adam Walsh Act only allows a Tier III offender to petition for a reduction in registration obligations after maintaining a clean record for twenty-five years.¹²⁰

2. Puerto Rico Public Law Number 266

In 2004, to modernize its sex offender legislation while complying with the Jacob Wetterling Act of 1994, Puerto Rico revised its sex offender registration laws to follow the national trend of implementing more rigorous requirements on sex offenders and utilized the Internet as a means of disseminating information to interested parties.¹²¹ The Puerto Rican legislature created Puerto Rico Public Law Number 266 (“Law 266”) as a way to stay current with its sex offender laws by “protect[ing] our citizenry from dangerous sexual offenders, assuring them a better quality of life.”¹²² Unlike Law 28, Law 266 expands the criteria for those who must register by requiring anyone convicted of committing or attempting to commit the following crimes to register in the Criminal Justice Information System:

rape, seduction, sodomy, lewd or lascivious acts, procuring, ruffianism or trade of persons when the victim is under eighteen (18) years of age and the offense is aggravated; crimes against the protection of children, incest, restraint of freedom when the victim is under sixteen (16) years and not his/her child, kidnapping when the victim is under eighteen (18) years of age and is not his/her child; child theft, child perversion when a child under eighteen (18) years of age is admitted or held in a house of prostitution or sodomy.¹²³

Moreover, Section 4(b) requires that a registered sex offender who has been released must notify the local police “of the jurisdiction in which he/she resides within a term of less than ten (10) calendar days.”¹²⁴ Section 4(f) dictates that any sex offender who moves to Puerto Rico from another state must be evaluated prior to moving, and the offender’s information “shall be immediately available through computer terminals configured in the telecommunications network of the System for the use of the Police Headquarters of the jurisdiction in which the person is to reside.”¹²⁵ Thus Puerto Rico’s implementation of the Internet and modern telecommunications as a means to disseminate information came *before* the federal recommendations set forth in the Adam Walsh Act.¹²⁶ Under Law 266, offenders are also subject to various registration obligations. Section five explains that the sex offender “shall notify the Police Headquarters of the jurisdiction in which

¹²⁰ *Id.*

¹²¹ *See* 2004 P.R. Laws No. 266.

¹²² *Id.*

¹²³ *Id.* § 3(a).

¹²⁴ *Id.* § 4(b).

¹²⁵ *Id.* § 4(f).

¹²⁶ *See generally id.* § 8.

he/she resides of any change in his/her temporary or permanent address at least ten (10) days before moving.”¹²⁷

Law 266 however also makes note in its “Statement of Public Policy” that “[t]he mechanisms adopted and implemented pursuant to this Act do not have a punitive purpose, but rather exclusively intend to protect the safety and well-being of the most vulnerable sectors of our society that are deserving of protection.”¹²⁸ Accordingly, the penalties for failing to register are only slightly more stringent than those of Law 28.¹²⁹ A sex offender who fails to register under Law 266 also incurs a misdemeanor violation and will be subject to a fine of no more than \$5,000 and imprisonment for up to six months.¹³⁰ As a result of these relatively minor penalties, some sex offenders have decided to relocate to Puerto Rico to take advantage of the lenient laws.¹³¹

3. The Weathers Case and The Current State of Sex Offenders in Puerto Rico

In August 2010, Jeffrey Allen Weathers, age fifty-three, was arrested in Puerto Rico for failing to register his status as a sex offender.¹³² After an altercation with his landlord at his home in Quebradillas, Puerto Rico, the landlord conducted research on Weathers and discovered that he had been convicted in Alaska for sexually abusing a minor in 1999 and possessing child pornography in 2006.¹³³ Weathers was subsequently apprehended by the United States Marshals and was sent back to Alaska to face prosecution for failing to register in his new place of residence.¹³⁴

Weathers is an example of one of many sex offenders—both registered and unregistered—that have migrated to Puerto Rico in recent years. In 2010, on average, six registered sex offenders moved to Puerto Rico each month, and the Puerto Rican Police Department is currently investigating the possibility of ten unregistered offenders that may have moved to the island.¹³⁵ Most recently, in April 2011, seventeen convicted sex offenders were indicted and arrested for failing to register with the Puerto Rico authorities after traveling from the continental United States to the island.¹³⁶ In 2010, roughly 2,990 registered sex offenders

¹²⁷ 2004 P.R. Laws No. 266 § 5.

¹²⁸ *Id.* § 1.

¹²⁹ *See id.* § 11; *see also* 1997 P.R. Laws No. 28 § 9 (repealed 2004).

¹³⁰ 2004 P.R. Laws No. 266 § 11.

¹³¹ *See* Mike Melia, *Sex Offenders Seek Sanctuary in Caribbean Sun*, ASSOC. PRESS (Sept. 9 2010), www.thegrio.com/news/us-sex-offenders-seek-sanctuary-in-caribbean-sun.php

(“law enforcement officials say other sex offenders share the perception that tropical Puerto Rico, where restrictions are less strict than in many U.S. jurisdictions, is an ideal place to hide.”).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *17 Indicted and Arrested in Puerto Rico for Failing to Register as Sex Offenders*, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 29, 2011) [hereinafter *17 Indicted*],

were living in Puerto Rico, and there were approximately 747,408 registered sex offenders throughout the United States.¹³⁷ Of the 747,408 offenders that are registered, approximately 100,000 offenders remain unaccounted for.¹³⁸

IV. WHY ARE SEX OFFENDERS MIGRATING TO PUERTO RICO, AND HAS PUERTO RICO ADOPTED THE REQUIREMENTS OF SORNA?

A. Explanations for the Recent Sex Offender Influx in Puerto Rico

The recent trend of sex offenders moving to Puerto Rico should not be surprising to the Puerto Rican government as the Internet has provided sex offenders with means to research which states and territories have the weakest and most flexible sex offender registration laws.¹³⁹ Puerto Rico has become a decent candidate for offenders seeking to regain the freedoms they were forced to relinquish for numerous reasons. First, unlike the states, Puerto Rico's geographic separation and commonwealth status create the perception that Puerto Rico is akin to a foreign country with less rigorous enforcement policies.¹⁴⁰ Secondly, despite Puerto Rico's small size, it is one of the most densely populated areas in the United States. Although Puerto Rico is three times the size of Rhode Island,¹⁴¹ approximately four million people inhabit it.¹⁴² Such a dense population may make it difficult to track small numbers of unregistered offenders.¹⁴³ Third, sex offenders can avoid the difficulties of trying to move to foreign countries as a way to avoid registration requirements because of Puerto Rico's "unincorporated" territorial status.¹⁴⁴ Since the Jones Act in 1917, when Puerto Ricans were given United States citizenship, a valid United States passport is not required to travel or move to Puerto Rico.¹⁴⁵

The remaining and most significant potential justifications for greater numbers of sex offenders traveling to Puerto Rico lie in the shortcomings of Puerto Rico Public Laws 28 and 266. Sex offenders that move to Puerto Rico undoubtedly

<http://www.ice.gov/news/releases/1104/110429sanjuan.htm>.

¹³⁷ Nat'l Ctr. for Missing and Exploited Children, *Map of Registered Offenders in the United States*, www.missingkids.com/en_US/documents/sex-offender-map.pdf (last visited Dec. 17, 2010).

¹³⁸ Nat'l Ctr. for Missing and Exploited Children, *Sex Offender Tracking*, http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=3893 (last visited Mar. 2, 2012).

¹³⁹ Melia, *supra* note 131.

¹⁴⁰ See *id.*

¹⁴¹ Magaly Rivera, *Welcome to Puerto Rico!*, <http://www.topuertorico.org/descrip.shtml> (last visited Mar. 2, 2012).

¹⁴² *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2009*, U.S. CENSUS BUREAU (2009), available at <http://www.census.gov/popest/states/NST-ann-est.html> (last updated July 8, 2010).

¹⁴³ Rivera, *supra* note 141. As of 2009 estimates, Puerto Rico had a population density of 1,163 density per sq mi/449 persons per sq km.

¹⁴⁴ Aleinikoff, *supra* note 90, at 26.

¹⁴⁵ See 48 U.S.C. § 731 (1917).

do so to exploit the relaxed penalties and restrictions of Law 28 and 266.¹⁴⁶ In both Law 28 and 266, failing to register is categorized as a *misdemeanor* offense compared to its designation as a *felony* under the Adam Walsh Act.¹⁴⁷ Further, the Adam Walsh Act requires the offender to provide much more information, including current photographs of the offender, work and school addresses, a DNA sample, and anything else the Attorney General deems appropriate.¹⁴⁸ In addition, Laws 28 and 266, unlike legislation in most states, do not set any residency restrictions on sex offenders that live in Puerto Rico.¹⁴⁹ Due to these deficiencies, one should ponder why the Puerto Rican legislature has failed to dedicate itself to ameliorating these flaws by adopting a more comprehensive regime similar to the Adam Walsh Act and SORNA.

B. Puerto Rico's Non-Compliance with SORNA

Presently, Puerto Rico, two other United States territories, thirty-five states, and 163 recognized Indian tribes have not met the federal requirements necessary for compliance imposed by SORNA.¹⁵⁰ Unlike other jurisdictions that have either begun to comply with SORNA requisites or abandoned compliance altogether,¹⁵¹ Puerto Rico's current status with regards to compliance is unknown, though Puerto Rico did request a second implementation extension in 2010.¹⁵² Since Puerto Rico failed to respond to the 2009 SEARCH survey,¹⁵³ not only is Puerto Rico's compliance status unclear, but any specific barriers and obstacles the Puerto Rican government faces in attempting to comply remain a mystery.¹⁵⁴

Currently, Law 266 is a far cry from the requirements necessary to obtain compliance with SORNA. There are too many deficiencies currently in Law 266 to note with regard to non-compliance,¹⁵⁵ but the most significant shortcomings are as

¹⁴⁶ See discussion *supra* Part III(B)(1)&(2).

¹⁴⁷ See generally 1997 P.R. Laws No. 28 § 9 (repealed 2004); 2004 P.R. Laws No. 266 § 11.

¹⁴⁸ 42 U.S.C. §16914(a) & (b) (2006).

¹⁴⁹ Wendy Koch, *States Restricting Where Sex Offenders Live*, USA TODAY (Feb. 25, 2007), http://www.usatoday.com/news/nation/2007-02-25-sex-offenders-list_x.htm (citing all states that have various residency restrictions. Puerto Rico is not listed among jurisdictions with residency restrictions).

¹⁵⁰ Newsroom, *SMART: Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking*, OFFICE OF JUSTICE PROGRAMS, available at <http://www.ojp.usdoj.gov/smart/newsroom.htm>.

¹⁵¹ SEARCH Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA), <http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009Rev071609.pdf> (Apr. 2009).

¹⁵² SORNA Implementation Update, *Office of Justice Programs. SMART: Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking*, OFFICE OF JUSTICE PROGRAMS (2010), <http://www.ojp.gov/smart/smartwatch/10summer/update.html>.

¹⁵³ See SEARCH, *supra* note 78.

¹⁵⁴ *Id.*

¹⁵⁵ SORNA Substantial Implementation Checklist, *SMART: Office of Sex Offender Monitoring, Apprehending, Registering, and Tracking*, OFFICE OF JUSTICE PROGRAMS (2011), available at <http://www.ojp.usdoj.gov/smart/FillableChecklistwSuppGuidelines.doc>. After cross referencing the SORNA Substantial Implementation Checklist with Puerto Rico Law 266, the Law is non-compliant in every subcategory including: (i) immediate transfer of information; (ii) comprehensive list of offenses included in the registry; (iii) tiering of offenses; (iv) specific required registration information; (v)

follows: (1) lack of a three-tier sex offender classification system based on the nature of the offender's crime and his or her prior criminal history; (2) more strict temporal requirements for offender registration; and (3) more stringent consequences for offenders who fail to register.¹⁵⁶

Law 266 has no tier classification system for sex offenders like those required by SORNA; any individual who commits a sexual offense listed in Section three of Law 266 is considered a "sexual predator" and must register.¹⁵⁷ Additionally, individuals who were convicted of a sexual offense in federal, military, or state court for sexual offenses similar to those listed in Law 266, as well as imprisoned sex offenders, must all register.¹⁵⁸ In addition, Law 266 does not have an adequate allotted time period for registration by sex offenders—under Law 266 an offender has fifteen days from his or her sentencing to initially register with the local authorities.¹⁵⁹ SORNA, however, requires a sex offender that has been classified in one of the three tiers to register within three business days after sentencing.¹⁶⁰ The criminal penalties for failure to register under Law 266 fall utterly short of those established by SORNA. Law 266 states that failure to register by a sex offender constitutes a misdemeanor violation punishable by up to \$5,000 in fines and/or up to six months in prison.¹⁶¹ According to the language of Law 266, judges have *discretion* to determine whether sex offenders should pay the fine, serve jail time, or incur both penalties. SORNA, in contrast, considers failure to register a felony that warrants an unspecified fine and a maximum ten-year imprisonment.¹⁶² Unlike Law 266, SORNA's mandates that jurisdictions create a state penalty for failure to comply has a maximum term of imprisonment for greater than one year.¹⁶³

Due to Puerto Rico's failure to adopt the minimum requirements set forth in SORNA, Puerto Rico will lose ten percent of the JAG funding it would receive each year until it complies with SORNA's mandates.¹⁶⁴ States, territories, and Indian tribes use JAG funding to improve or enhance technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems for various programs including: "[l]aw enforcement programs;

jurisdictions in which registration is required; (vi) timing and notice of initial registration; (vii) initial registration for retroactive classes of offenders; (viii) keeping registration information current; (ix) international travel registration requirements; (x) verification/appearance requirements; (xi) registry website requirements; (xii) community notification; and (xiii) state penalty of at least one year incarceration. *See id.*; 2004 P.R. Laws No. 266.

¹⁵⁶ 2004 P.R. Laws No. 266.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *See* 42 U.S.C. § 16913 (2006).

¹⁶¹ 2004 P.R. Laws No. 266 § 11.

¹⁶² 18 U.S.C. § 2250.

¹⁶³ 42 U.S.C. § 16913(e) (2006).

¹⁶⁴ 42 U.S.C. § 16925(a) (2006).

[p]rosecution and court programs; [p]revention and education programs; [c]orrectional and community corrections programs; [d]rug treatment and enforcement programs; [p]lanning, evaluation, and technology improvement programs; [and c]rime victim and witness programs.”¹⁶⁵ Puerto Rico’s JAG funding has decreased steadily since 2003, and whereas the commonwealth once received \$6,765,952, it was recently provided approximately \$3,000,000 less for the 2011 fiscal year.¹⁶⁶ Should Puerto Rico fail to comply with SORNA’s requirements and lose ten percent of its JAG funding, Puerto Rico would be left with \$3,542,310 in JAG funding for the aforementioned law enforcement purposes in 2012.¹⁶⁷ Not only would this decrease in funding affect law enforcement’s ability to monitor, prevent, and prosecute sex crimes, it would detrimentally affect Puerto Rico’s capability to handle violent crimes and drug related crimes—an issue that is becoming increasingly prevalent as the drug trafficking through Puerto Rico into the United States has continued to gain momentum in recent years.¹⁶⁸

Thus the question remains, is it in Puerto Rico’s best interest economically, socially, and logistically to comply with the Adam Walsh Act for the future despite missing the July 27, 2011 deadline? Should Puerto Rico adopt a more stringent and extensive registration system, or should Puerto Rico merely tweak the current laws in place? The following sections briefly describe the three most frequent and considerable criticisms of the Adam Walsh Act generally, and offer suggestions as to how Puerto Rico should proceed with sex offender registration in the future.

V. GENERAL OPPOSITION TO THE ADAM WALSH ACT

Though fifteen states have complied with SORNA, many states have fundamental concerns with specific applications of the Adam Walsh Act.¹⁶⁹ Among the most cited complaints throughout the remaining non-compliant

¹⁶⁵ Polycom Grant Assistance Program, *Getting Grant Ready for JAG*, POLYCOM (2011), available at <http://www.polycom.com/global/documents/solutions/industrysolutions/grantsassistance/grantresources/getting-grant-ready-for-jag.pdf>.

¹⁶⁶ United States Dep’t of Justice: *Office of Justice Programs, Justice Assistance Grant (JAG) Program: FY 2011 Allocations and Disparate Information*, <http://www.ojp.usdoj.gov/BJA/grant/jag.html> (last visited Jan. 5, 2012). The exact figure of Puerto Rico’s JAG funding for the 2011 fiscal year was \$3,935,901.

¹⁶⁷ *Id.* Ten percent of Puerto Rico’s FY 2011 JAG allocation would equal \$393,590. By subtracting the \$393,590 from the \$3,935,901, Puerto Rico would retain \$3,542,310 in JAG funding for 2011.

¹⁶⁸ See *Crime in the United States*, UNITED STATES DEP’T OF JUSTICE (2009), available at http://www2.fbi.gov/ucr/cius2009/data/table_04.html (according to CIUS, in 2008-2009 alone, Puerto Rico saw a roughly ten percent increase in violent crimes, murder, robbery, and aggravated assault); see also Nick Valencia, *Feuding Drug Gangs Spark Violence in Puerto Rico, Authorities Say*, CNN JUSTICE (June 29, 2011), <http://articles.cnn.com/2011-06-29/justice/puerto.rico.violence1drug-gangs-drug-trafficking-puerto-rican-police?s=PM:CRIME>.

¹⁶⁹ The fifteen states include Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, South Carolina, South Dakota, Tennessee, and Wyoming. National Conf. of State Legislatures, *Adam Walsh Child Protection and Safety Act* (Jan. 5, 2012), <http://www.ncsl.org/?tabid=12696>.

jurisdictions are the retroactive applicability of SORNA registration requirements and SORNA's inclusion of juveniles who commit sexual offenses.¹⁷⁰

While challenges asserting that SORNA violates the Ex Post Facto Clause of the United States Constitution have failed,¹⁷¹ roughly twenty states are concerned with SORNA's inclusion of juveniles who commit less serious offenses into the same registries as those who commit heinous sex crimes.¹⁷² Lastly, several states have conducted cost/benefit analyses focused on the immediate costs of implementing SORNA and have concluded that the loss in federal JAG funding might be worth bypassing SORNA's sex offender registration overhaul.¹⁷³

A. Retroactivity

The Ex Post Facto Clauses of the United States and Puerto Rican Constitutions essentially state the same concept: no state shall pass legislation ex post facto.¹⁷⁴ Despite the explicit language prohibiting ex post facto legislation for fear of unjustly penalizing groups of individuals, the Adam Walsh Act has been challenged for its explicit retroactive application.¹⁷⁵ When the Adam Walsh Act was passed in 2006, it was unclear as to whether the registration requirements would extend to sex offenders who committed crimes prior to its enactment. In 2007, the Attorney General issued an interim rule that ended the confusion, stating that SORNA's sex offender registration requirements applied retroactively.¹⁷⁶ The Attorney General's requested interim rulemaking was deemed not in violation of the ex post facto clauses of either Constitution because "sex offender registration and notification requirements are intended to be non-punitive, regulatory measures adopted for public safety purposes, and hence may validly be applied (and enforced by criminal sanctions) against sex offenders whose predicate convictions occurred prior to the creation of these requirements."¹⁷⁷ Even prior to the ruling however, the constitutionality of SORNA had been unsuccessfully challenged numerous times.¹⁷⁸

¹⁷⁰ See *infra* note 186. See also SEARCH, *supra* note 78.

¹⁷¹ See *infra* note 177. See also Wayne A. Logan, *The Adam Walsh Act and the Failed Promise of Administrative Federalism*, 78 GEO. WASH. L. REV. 993 (2010) (for further discussion on administrative federalism and the unconstitutionality of the retroactive application of the Adam Walsh Act, specifically the Attorney General's interim ruling).

¹⁷² See SEARCH, *supra* note 78.

¹⁷³ *Id.*

¹⁷⁴ U.S. CONST. art. I, § 9, cl. 3; P.R. CONST. art. II, § 12.

¹⁷⁵ See generally *The Sex Offender Registration and Notification Act of 2011*, 28 C.F.R. § 72.3 (2011).

¹⁷⁶ See Office of the Attorney General, *Applicability of the Sex Offender Registration and Notification Act*, 72 Fed. Reg. 8894 (Feb. 28, 2007) (to be codified at 28 C.F.R. pt. 72).

¹⁷⁷ *Id.*; see also *Smith v. Doe*, 538 U.S. 84 (2003) (holding that respondent-sex offenders could not show that the effects of the Alaska registration regime "negate[d] Alaska's intent to have a civil regulatory scheme.").

¹⁷⁸ See Logan, *supra* note 171 (discussing administrative federalism and the unconstitutionality of the retroactive application of the Adam Walsh Act, specifically the Attorney General's interim ruling).

B. Concerns Regarding the Application of the Adam Walsh Act to Juveniles

Many State legislatures believe that focusing resources on registering juvenile sex offenders with a lower rate of recidivism would allow dangerous sex offenders to remain under the radar.¹⁷⁹ Furthermore, over-inclusive sex offender registries, like those proposed under the Adam Walsh Act, aggregate offenders who commit perverse sexual acts and sexual violence with teenagers who commit relatively minor offenses.¹⁸⁰ One such example of the difficulties that can potentially occur under this regime is the case of Philip Alpert, who experienced a bitter breakup with his girlfriend in 2009.¹⁸¹ After the breakup, Alpert, who had just turned eighteen, sent naked pictures of his sixteen-year old girlfriend to his friends after she had texted them to him months earlier.¹⁸² Alpert was subsequently prosecuted in Florida for possessing child pornography to which he pleaded no contest and was convicted.¹⁸³ As a result, Alpert served five years of probation, is now a convicted felon, was expelled from college, and has to register as a sex offender in Florida until he is forty-three years old.¹⁸⁴ Had Alpert been charged in Puerto Rico, rather than in Florida—an Adam Walsh Act compliant jurisdiction—he would have been tried as a juvenile and he would not have to continuously register under Law 266, because the statute is silent on the matter of juvenile registration.¹⁸⁵

In March of 2009, as the July 27 SORNA compliance deadline approached, the House of Representatives Subcommittee on Crime, Terrorism and Homeland Security held a hearing to discuss barriers facing various jurisdictions as they attempted to implement SORNA.¹⁸⁶ The application of SORNA registration

¹⁷⁹ See John Floyd & Billy Sinclair, *Sex Offender Registration Law Begg Reform*, JOHNTFLOYD.COM (Oct. 1, 2009, 1:28 AM), <http://www.johntfloyd.com/blog/2009/10/01/sex-offender-registration-laws-beg-reform/> (explaining that current SORNA registration requirements for juveniles is unnecessarily stringent). In 2008, an 18-year-old boy and his 16-year-old girlfriend had a difficult breakup and the boy posted nude pictures of his ex girlfriend on the internet; he was convicted of distributing child pornography and is now required to register yearly until he is 43 years old. *Id.*

¹⁸⁰ William Pfeifer Jr., *Too Many Registered Sex Offenders Make Dangerous Sex Offenders Difficult to Track*, EXAMINER (Sept. 5, 2009), <http://www.examiner.com/legal-news-in-national/too-many-registered-sex-offenders-make-dangerous-sex-offenders-difficult-to-track> (“Both the hormonally-charged children and the perverted adults are branded as sex offenders on the same [] databases. . . . [T]heir images are spread across the internet for the rest of their lives, despite obvious differences in the situations [;] studies show[] that the reoffender rate of juvenile sex offenders is only 10 percent.”).

¹⁸¹ Deborah Feyerick & Sheila Steffen, *‘Sexing’ Lands Teen on Sex Offender List*, CNN JUSTICE (Apr. 7 2009), <http://articles.cnn.com/2009-04-07/justice/sexting.busts1phillip-alpert-offender-list-offender-registry?s=PM:CRIME>.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See 2004 P.R. Laws No. 266.

¹⁸⁶ See *Sex Offender Notification and Registration Act (SORNA): Barriers to Timely Compliance by States: Hearing Before the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary of the House of Representatives*, 111th Cong. 111-21 (2009), available at <http://judiciary.house.gov/hearings/printers/111th/111-2147923.pdf>.

requirements to juvenile offenders was the most significant concern.¹⁸⁷ Specifically, SORNA requires that any youth offender at least fourteen-years-old who has committed an offense comparable to or more severe than aggravated sexual abuse be subject to the same registration requirements as adult offenders.¹⁸⁸ This can potentially result in a first time juvenile sex offender having to register periodically for an extended period of years, such as in the case of Phillip Alpert, while being labeled a sex offender for anywhere from ten years to their entire lifetime.

The cause for concern arises out of the traditional notion that the juvenile correctional system and the adult correctional system are fundamentally different. The juvenile correctional system is intended to “reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior.”¹⁸⁹ Furthermore, the juvenile system should meet the “unique . . . needs of juveniles, and give juveniles access to opportunities for personal and social growth.”¹⁹⁰ Various jurisdictions believe that SORNA’s expansive application of sex offender registration requirements is unnecessarily harsh on juveniles since the stigmatization of juveniles could permanently and negatively impact a juvenile offender’s life, and because juveniles have a significantly lower rate of recidivism.¹⁹¹ Juvenile offenders, whose average rate of recidivism is between three and seven percent,¹⁹² can suffer public humiliation and stigmatization their entire lives despite juvenile offenders having higher success rates with sex offender rehabilitation treatments.¹⁹³ Also, due to SORNA’s “one size fits all” approach concerning juvenile offenders and adult offenders alike, juvenile offenders are deprived of individual assessments that would take into consideration the offender’s developmental status and propensity for risk or recidivism.¹⁹⁴

C. Economic Costs of Implementing SORNA

Despite concerns about retroactive applicability and overly harsh restrictions on juvenile offenders, seven states have cited economic unfeasibility as a reason for

¹⁸⁷ See *id.*

¹⁸⁸ See 42 U.S.C. § 16911(8) (2006).

¹⁸⁹ INSTITUTE OF JUDICIAL ADMINISTRATION & A.B.A. JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO DISPOSITIONS § 1.1 (1979).

¹⁹⁰ *Id.*

¹⁹¹ See *SORNA*, *supra* note 186; see also Franklin E. Zimring, Alex R. Piquero, Wesley Jennings, & Stephanie A. Hays, *The Predictive Power of Juvenile Sex Offending: Evidence From the Second Philadelphia Birth Cohort* (2007), available at <http://ssrn.com/abstract=995918>.

¹⁹² See Michael Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Sex Offenders*, 19 *SEXUAL ABUSE* 107 (2007).

¹⁹³ See Robert E. Freeman-Longo, *Revisiting Megan’s Law and Sex Offender Registration: Prevention or Problem*, AMERICAN PROBATION AND PAROLE ASSOCIATION (2000), available at <http://www.appunet.org/revisitingmegan.pdf>.

¹⁹⁴ See *supra* note 186.

retaining their current sex offender registration legislation.¹⁹⁵ California, the most prominent example, released a public statement explaining all of its reasons for bypassing SORNA's requirements.¹⁹⁶ California's "Statement of Position" explains that complete implementation of SORNA—including conducting retroactive record assessments, updating local law enforcement registration requirements, and re-classifying current and retroactively affected offender—would cost roughly thirty-one million dollars.¹⁹⁷ Since the reduction in JAG funding that California would face for non-compliance with SORNA would be a mere 1.2 million dollars, California has every incentive to maintain its current actuarial risk assessment approach to sex offender legislation.¹⁹⁸ While only seven states have cited cost as a major barrier to compliance, the Justice Policy Institute's cost of compliance calculations reveal that the costs of *every* state to change its sex offender registration schemes would far outweigh the loss in JAG funding each state would incur.¹⁹⁹

D. Recommendations

While concrete data on the cost of implementation is scarce, Puerto Rico is likely to benefit more from amending its current sex offender registration laws than meeting the standards set forth in SORNA. Using the Justice Policy Institute's method of calculating the states' estimated first year cost for implementing SORNA in 2009, Puerto Rico—an island of 3,967,288 people—would pay roughly \$6,307,987.92 in the first year.²⁰⁰ Though a ten percent loss in JAG funding for law enforcement programs may seem like a major hindrance, the money the Puerto Rican government would save by refusing to implement a comprehensive sex offender registration system could be used both to implement a less strict, but

¹⁹⁵ See SEARCH, *supra* note 78.

¹⁹⁶ *Statement of Position*, STATE OF CALIFORNIA SEX OFFENDER MANAGEMENT BOARD, available at <http://www.ncsl.org/issues-research/justice/cost-benefit-analyses-of-sorna-implementation.aspx>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* (California has adopted a sex offender registration scheme that incorporates actual current and future risk assessment to determine the classification of sex offenders in contrast to the offense based classifications mandated in the Adam Walsh Act); see also Dylan Scott, *States Find SORNA Non-Compliance Cheaper*, GOVERNING (Nov. 7 2011), <http://www.governing.com/blogs/fedwatch/States-Find-SORNA-Non-Compliance-Cheaper.html>. Risa Sugarman of New York's Office of Sex Offender Management shared the California legislature's sentiments explaining that "[t]he costs would be far greater than the loss . . . New York believes that our present laws and risk assessment method provide our citizens with effective protection against sexual predators." *Id.* For the 2011 Fiscal Year, New York forfeited 1.6 million dollars from the 16 million it was entitled to in JAG allocations. *Id.*

¹⁹⁹ See *What Will it Cost States to Comply With The Sex Offender Registration and Notification Act?*, JUSTICE POLICY INST. (Sept. 2, 2008), available at www.justicepolicy.org/images/upload/08-08FACSORNACostsJJ.pdf.

²⁰⁰ See *id.* The Justice Policy Institute describes the formula for the first year implementation cost calculation in footnote six on page two. Since U.S. territories were not included in these calculations, the formula was applied separately using the pertinent information relating to Puerto Rico. Additionally, the calculation was made using the population estimates and variables for 2009. See *Population Estimates Vintage 2009: National Tables*, UNITED STATES CENSUS BUREAU, http://www.census.gov/popest/data/historical/2000s/vintage_2009/index.html.

adequate system, and to address the drastic increases in violent crime and drug trafficking that has plagued Puerto Rico in the last decade.²⁰¹ Whereas the public policy rationale for forcing convicted sex offenders to continually register and subject themselves to a myriad of verification and surveillance processes under the Adam Walsh Act is sound, it remains unclear whether the sheer abundance of information each jurisdiction must compile will serve useful enough to warrant the enormous costs of implementation.

With regard to juvenile sex offender registration, due to the detrimental effects of lifelong publicly accessible juvenile sex offender registration offered by adopting SORNA, Puerto Rico should instead adopt one of two solutions currently practiced by various states. The first solution is for the Puerto Rican legislature to amend Law 266 to create a separate juvenile sex offender registry. Currently only six states—Arkansas, Missouri, Montana, North Carolina, Oklahoma, and Wisconsin—have separate juvenile sex offender registration laws.²⁰² However, the specifics of this solution vary from state to state. For example, in Idaho, the separate juvenile registry is only accessible to the public after requesting the information from the local police or through the state’s website.²⁰³ This enables the public *some* access to juvenile offenders, while preserving some privacy for juveniles who have committed offenses. Additionally, this would eliminate the legislative silence currently in place under Law 266, and prevent the unjust result noted in the Alpert case, while allowing law enforcement officials and the community to monitor convicted juveniles and potential recidivists.

The second solution is for Puerto Rico to amend Law 266 to allow “un-registration,” which allows juvenile offenders to petition courts to be relieved of his or her duty to register after a period of time, or when the offender reaches his or her eighteenth birthday.²⁰⁴ While twenty states currently offer different ways for juveniles to relieve themselves of registration requirements, Oregon’s specialized approach includes relief from registration after a two-year period.²⁰⁵ Though the exact un-registration period should be left to the legislature to determine, un-registration should be obligatory for juveniles, unless judicial discretion deems it imprudent. Under this framework, juveniles would be entitled to leniency in order to satisfy public policy concerns of separating criminal penalties for adults and

²⁰¹ See Mike Melia, *U.S. Soldiers Fight Crime in Puerto Rico*, MSNBC (Jun. 13 2010), http://www.msnbc.msn.com/id/37670735/ns/us_news-life/. Puerto Rico has faced major increases in violent crime due to drug gangs in the last decade, and while cuts in JAG funding would directly affect the budget for law enforcement purposes, the millions saved could perhaps be reallocated to deal with this growing problem. See *id.*

²⁰² See *The Effective Management of Juvenile Sex Offenders In The Community*, CENTER FOR SEX OFFENDER MANAGEMENT, available at <http://www.csom.org/train/juvenile/7/74.htm#heading6>.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ OR. REV. STAT. § 181.823(1)(a) (2011). According to this section, convicted juvenile offenders are not entitled to relief, but rather must file a petition to relieve themselves of the duty to report.

minors, while judges would retain the right in extreme cases to deny un-registration or prolong the un-registration process.

Though adopting the requirements of the Adam Walsh Act may be economically impracticable and contra to public policy with regard to juvenile offenders, it is no longer a secret that Puerto Rico's current legislation is certainly inadequate. In order to dispel notions that Puerto Rico is a relaxed jurisdiction, at a minimum, the Puerto Rican government must increase the penalties for failing to register within the commonwealth's sex offender registry. The current misdemeanor charge, and \$5,000 fine and/or maximum six month imprisonment is laughable at best.²⁰⁶ Instead, Puerto Rico should use the Adam Walsh Act as a template to amend Law 266 and make the penalty for failure to register a felony with a one-year minimum term of incarceration.²⁰⁷ Moreover, it would behoove the Puerto Rican legislature to peruse SORNA's multitudinous "Substantial Implementation Checklist" to determine which improvements to Law 266 are most cost efficient and feasible to implement. For example, classifying sex offenders by statutory offense committed, or in contrast, by future risk assessment, may be more beneficial to law enforcement officials and the community at large because it would create a strong, easily accessible knowledge base of which offenders are potentially most dangerous. Another example may be to increase the amount of identifiable information that each offender is required to submit, such as mandating each offender submit DNA samples.

CONCLUSION

Sex offender registration and sexual violence throughout the United States and its territories continues to be a cause for concern despite the recent overhaul in sex offender registration legislation. Regardless of how thorough and comprehensive the Adam Walsh Act is, its application to all United States jurisdictions is a balancing act of the most serious nature. While conforming to SORNA's requirements may help curb the very recent influx of sex offenders migrating to Puerto Rico, compliance could mean incurring large costs for implementation, unfair retroactive applications to registered sex offenders, and punitive treatment of both adult and juvenile sex offenders in Puerto Rico. Though Puerto Rico's current sex offender legislation, Law 266, is outdated, in need of revision, and inadequate with regard to organization and severity of penalties when compared to the Adam Walsh Act, Puerto Rico might be better off updating its current legislative scheme and saving unnecessary expenses as the island deals with sex offenders as an autonomous unincorporated territory.

²⁰⁶ See 2004 P.R. Laws No. 244.

²⁰⁷ See 42 U.S.C. § 16913(e) (2006).