

(H. B. 329)

(No. 91)

(Approved August 26, 2005)

AN ACT

To amend Section 3.6 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” to add a new subsection (d) to condition participation in diversion programs to acceptance by the person of the commission of the crime charged and acknowledgement of his/her behavior.

STATEMENT OF MOTIVES

Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” is a valuable instrument created by our Legislature to help further the social advancement of Puerto Rican society. This Act typifies the different forms of violence between couples and censors them as one of our greatest social problems.

It includes punitive measures as well as rehabilitation measures, because only a change in the behavior patterns and views on human relationships can truly put an end to the spiral of domestic violence. Under Act No. 54, *supra*, there is a Diversion Program with characteristics of its own that provides to a person convicted by trial or who enters a guilty plea, the opportunity to submit to a year long rehabilitation program with the incentive of clearing his/her record upon the successful completion thereof.

Experience has shown to us that the rehabilitation of a person who falls into a pattern of destructive behavior, whether of aggression or addiction, cannot be achieved if the person does not acknowledge that he/she has a problem and needs to take action in order to overcome it. Alcoholics, drug addicts and compulsive

gamblers all have to accept the need to change their behavior if they want to successfully free themselves from their problem. Thus, effective participation in a rehabilitation program for domestic abusers must start with the acknowledgement of the behavior incurred and acceptance of the commission of a crime.

However, it is not uncommon for persons convicted in cases of domestic violence to claim participation in diversion and rehabilitation programs as a question of law, thus evading the punitive phase of the law and clearing their record, while they insist that their behavior has not been improper and that it is the law that is unfair. It is especially offensive that this claim is often made by persons who come from the higher socioeconomic levels or who hold important positions in the community; persons who sometimes display an attitude of not wanting rehabilitation, but rather that they deserve impunity.

By making the acknowledgement of responsibility a legal requirement in order to avail themselves of the diversion program, these persons are encouraged to take the first step toward true rehabilitation, and at the same time, this helps victims take an additional step toward the closure of this chapter of their lives.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 3.6 of Act No. 54 of August 15, 1989, as amended, is hereby amended to add a new subsection (d) to read as follows:

“Section 3.6.-After the trial and upon conviction, or that the accused pleads guilty to any of the crimes typified in this chapter, the court may, motu proprio or upon request of the Prosecuting Attorney’s Office or of the defense, suspend all procedures and submit the convicted person to probation, provided he/she participates in a reeducation and retraining program for persons who incur abusive conduct in a relationship with another. Prior to making any determination to that respect, the court shall hear the Prosecuting Attorney. Provided, That in the case of the crime of conjugal sexual assault, the diversion

from the procedures shall only be available for those cases in which the accused is the spouse or person that cohabits with the victim at the time of the sexual assault, provided that said cohabitation is not adulterous and complies with the circumstances provided hereinafter.

The diversion alternative shall only be available under the following circumstances:

- (a) ...
- (b) ...
- (c) ...
- (d) If as part the agreement and the participation in the reeducation program, the person renders a statement accepting the commission of the crime charged and acknowledging his/her behavior.

The court shall take into consideration the opinion of the victim as to the granting of this benefit or not, and shall impose the terms and conditions it deems reasonable and the duration of the probation requested, upon a prior agreement with the entity that shall render the services, which term shall never be less than one (1) year nor more than three (3) years.

If the person benefited by the probation established in this section fails to comply with the conditions thereof, the court, upon holding a hearing, may render ineffective the probation and shall proceed to pronounce judgment.

If the person benefited by the probation established in this section does not violate any of the conditions thereof, the court, upon prior recommendation of the competent personnel in charge of the program to which the accused was referred, in the exercise of its discretion and upon holding a hearing, may supersede the case against him/her.

Supersession pursuant to this section shall be conducted without the pronouncing of judgment by the court, but the case file shall be kept in the

court, confidentially, not accessible to the public and separate from other cases for the exclusive purpose of being used by the courts to determine, in subsequent proceedings, if the person qualifies to receive the benefits of this section.

The supersession of the case shall not be considered a conviction for the purposes of disqualification or incompetence imposed by law on convicts for the commission of a crime, and the exonerated person shall be entitled, after the supersession of the case, to have the Superintendent of the Puerto Rico Police return any file of fingerprints and photographs in the custody of the Puerto Rico Police taken in connection with the violation of the crimes that caused charges to be filed.

The supersession mentioned in this section may only be granted once to any person.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 91 (H.B. 329) of the 1st Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 3.6 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” to add a new subsection (d) to condition participation in diversion programs to acceptance by the person of the commission of the crime charged and acknowledgement of his/her behavior,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 3rd of March of 2006.

Francisco J. Domenech
Director