

(H.B. 2149)  
(Conference)

**(No. 165)**

(Approved December 28, 2005)

## **AN ACT**

To amend Sections 1.3, 2.8, 3.1, 3.2, 3.3, 3.4 and 3.5, add new subsections (i) and (j) to Section 3.2 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Violence Prevention and Intervention Act,” in order to clarify the definition and application of the term safe house, typify the violation of a restraining order as a felony, review the penalties for the crimes of domestic violence and typify the crime of aggravated abuse when the same is committed against a sixteen (16) year old minor by someone of over eighteen (18) years of age and thus adjust these to the provisions set forth in Act No. 149 of June 18, 2004, better known as the “Penal Code of the Commonwealth of Puerto Rico.”

## **STATEMENT OF MOTIVES**

Domestic violence is a social evil which affects us all. It is detrimental to those rights as fundamental as the right to freedom, to dignity, to health and to peace and to the opportunities for development. The victims of such criminal acts are overcome by the physical strength, the coercion and the intimidation exerted by the aggressor. Physical abuse, psychological violence, threats, the restriction of freedom and sexual assault against a partner are some of the modalities through which domestic violence is manifested and which mostly affect women.

The crimes of domestic violence increase year after year and there is no better dissuasive to said criminal conduct than the certainty that said conduct shall be punished. In seeking to fight the problem created by domestic violence, this Act intends to review the penalties to be imposed for committing crimes involving domestic violence.

Unfortunately, the number of victims of domestic violence not only increases year by year; the victims are even younger. The statistics of the Puerto Rico Police show an alarming trend. In 2004, eight hundred seventeen (817) victims of domestic violence between the ages of 10 and 17 were initially reported. Investigators maintain that the children who are victims of domestic violence are most frequently prone to bear the scars and learned patterns of violence throughout their lives. For this reason it becomes necessary to take legislative action to strengthen the public policy against all modalities of domestic violence.

We must, at the same time, underline the fact that Act that Act No. 177 of August 1, 2003, as amended, known as the "Comprehensive Child Well-being and Protection Act," reaffirms the duty as "parens patriae" of the Government to ensure the safety and best interest and wellbeing of children and adolescents. As part of this duty the Government must provide greater protection to these minors.

In harmony with the aforementioned public policy, the new "Penal Code of Commonwealth of Puerto Rico of 2004," increased the protection to minors sixteen (16) years of age who are passive subjects in cases of sexual aggression according to the recommendation of the Women's Advocate. This change was based on studies and data concerning the social problems in Puerto Rico involving the victims of sexual abuse and pregnancies among adolescents.

It is also necessary to clarify the relationship between the definitions of the concept “shelter” contained in Section 1.3 of Act No. 54 and in subsection (a) of Section 3.2 of the same Act to prevent an injustice. It thus becomes necessary to amend Sections 1.3, 2.8, 3.1, 3.2, 3.3, 3.4 and 3.5, and to establish a new Section 3.5.01 to clarify the definition and application of the term “shelter”, typify the violation of the orders for protection as a felony, review the penalties for crimes of domestic violence and typify the crime of aggravated abuse when the same is committed against a sixteen (16) year old minor by someone over eighteen (18) years of age and thus adjust these to the provisions of Act No. 149 of June 18, 2004, better known as the “Penal Code of the Commonwealth of Puerto Rico.”

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.-Subsection (b) of Section 1.3 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 1.3.-Definitions.

For the purposes of this Act the following terms and phrases shall have the meaning expressed below:

(a) ...

(b) Shelter – means any institution whose main function is to provide protection, safety, support services and temporary housing to surviving victims of domestic violence and their daughters and sons. This definition shall not apply to the term “lodged” as used in subsection (a) of Section 3.2 of this Act. For the purposes of said subsection the term sheltered shall be understood to have its common and ordinary meaning.”

Section 2.-Section 2.8 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 2.8.-Noncompliance of orders for protection.

Any knowingly committed violation of an order for protection issued pursuant to this Act shall be punished as a felony in the third degree in its lesser half.

Notwithstanding the provisions of Rule 11 of the Rules of Criminal Procedure, as amended, even though an order to those effects has not been issued, every law enforcement officer must make an arrest if presented with an order for protection issued pursuant to this Act or a similar Act against the person to be arrested, or if the officer determines that such an order exists after having communicated with the pertinent authorities and has reasonable grounds for believing that the provisions thereof have been violated.”

Section 3.-Section 3.1 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.1.-Abuse.

Any person who employs physical force or psychological abuse, intimidation or persecution against the person of his/her spouse, former spouse or the person with whom he/she cohabitates or has cohabitated or the person with whom, he/she has, or has had a consensual relationship, or the person with whom he/she has procreated a son or daughter, to cause physical harm to the person, the property held in esteem by him/her, except that which is privately owned by the offender or to another’s person, or to cause grave emotional harm, shall incur a felony in the fourth degree in its superior half.

The Court may impose the penalty of restitution besides the established penalty of imprisonment.”

Section 4.-Section 3.2 of Act No. 54 of August 15, 1989, as amended, is hereby amended to add new subsections (i) and (j) to read as follows:

“Section 3.2.-Aggravated abuse.

The penalty corresponding to a felony in the third degree in its lesser half shall be imposed if abuse as typified in this Act has been committed against the person of the spouse, former spouse or the person with whom he/she cohabitates or has cohabitated or with whom he/she has or has had a consensual relationship, or with whom a son or daughter has been procreated or if one of the following circumstances exists:

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (i) When committed against a pregnant woman.
- (j) When committed against a person under sixteen (16) years of age and the aggressor is eighteen (18) years of age or older.

The Court may impose the penalty of restitution besides the established penalty of imprisonment.”

Section 5.-Section 3.3 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.3.-Abuse by threat.

Any person who threatens his/her spouse, former spouse or the person with whom he/she cohabitates or has cohabitated or with whom he/she has or has had a consensual relationship, or with whom he/she has procreated a son or daughter, to cause specific harm to that person, to the property held in

esteem by him/her, except that which is privately owned by the offender or to another's person, shall incur a felony in the fourth degree in its superior half.

The Court may impose the penalty of restitution besides the established penalty of imprisonment.”

Section 6.-Section 3.4 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.4.-Abuse by restriction of freedom.

Any person who uses violence or intimidation against the person of his/her spouse, former spouse or the person with whom he/she cohabitates or has cohabitated or with whom he/she has or has had a consensual relationship, or with whom he/she has procreated a son or daughter, or who uses the pretext of suffering from, or that one of the aforementioned persons suffers from a mental disease or defect to restrict the freedom of the victim with his/her knowledge, shall incur a felony in the third degree in its lesser half.

The Court may impose the penalty of restitution besides the established penalty of imprisonment.”

Section 7.-Section 3.5 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.5.-Conjugal sexual assault.

As provided below, the penalty of imprisonment shall be imposed on any person that engages in a sexual relation without the consent of the spouse or former spouse, or of the person with whom he/she cohabitates or has cohabitated or of the person with whom he/she has or has had a consensual relationship, or of the person with whom he/she has procreated a son or daughter, under any of the following circumstances:

- (a) .....
- (b) .....
- (c) .....
- (d) .....

The penalty to be imposed for this crime in all its modalities shall correspond to a felony in the second severe degree.

The Court may impose the penalty of restitution besides the established penalty of imprisonment in any of the modalities indicated above.”

Section 8.-This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 165 (H.B. 2149) (Conference) of the 2<sup>nd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Sections 1.3, 2.8, 3.1, 3.2, 3.3, 3.4 and 3.5, add new subsections (i) and (j) to Section 3.2 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Violence Prevention and Intervention Act,” in order to clarify the definition and application of the term safe house, typify the violation of a restraining order as a felony, review the penalties for the crimes of domestic violence and typify the crime of aggravated abuse when the same is committed against a sixteen (16) year old minor by someone of over eighteen (18) years of age and thus adjust these to the provisions set forth in Act No. 149 of June 18, 2004, better known as the “Penal Code of the Commonwealth of Puerto Rico,

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

In San Juan, Puerto Rico, today 5<sup>th</sup> of July of 2006.

Francisco J. Domenech  
Director