

(H. B. 488)

**(No. 23-2013)**

(Approved May 29, 2013)

## **AN ACT**

To amend Sections 1.2, 1.3, 2.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.10, 4.3, and 5.3 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to extend the protection provided thereunder to all persons regardless of their marital status, sexual orientation, gender identity, or immigrant status; and amend Act No. 284-1999, as amended, known as the “Act Against Stalking,” by adding a subsection 8 to Section 4, and a subsection 5 to Section 5 in order to extend the protections provided thereunder to persons that hold an affective or intra-family relationship in a shared household where no intimate relationship exists.

### **STATEMENT OF MOTIVES**

The Constitution of the Commonwealth of Puerto Rico sets forth in Section 1 of Article II that the dignity of the human being is inviolable and that all men are equal before the law. In doing so, it established basic guarantees to protect life, integrity, and dignity, as well as physical and emotional health against any type of violent act.

Over the years, the Legislative Assembly of Puerto Rico has established special and additional protections to prevent and penalize violence in certain personal relationships. Act No. 121 of July 12, 1986 addresses violent acts against the elderly. Act No. 54 of August 15, 1989, as amended, addresses violence in current and past intimate relationships. Act No. 177-2003 and, subsequently, Act No. 246-2011 address violent acts against children. Act No. 284-1999, known as the “Act Against Stalking,” addresses violent acts in other interrelationship circumstances not previously mentioned.

All these laws are subject to legislative modification in order to adjust them to the need to reduce or eradicate violent acts in our society. Through this Act, the Legislative Assembly of Puerto Rico takes a step forward in said direction.

With the creation of Act No. 54 of August 15, 1989, as amended, the Legislative Assembly had intended to recognize domestic violence as a harmful situation for an individual, the family, and the community in general. According to the interpretations of the majority of the Supreme Court, Act No. 54 only protects some people, which is unacceptable. In *Pueblo de Puerto Rico v. Leandro Ruiz Martínez*, 159 D.P.R. 194 (2003), the Supreme Court had to decide whether the provisions of Act No. 54, *supra*, apply to acts of assault within same-sex relationships. The majority of the Supreme Court ruled against the defendant because the legislative history of said statute provided no basis to support it. “The decision of this Court has the effect of treating said minority sector of the population as second class citizens, depriving them of the rights recognized to other people” [our translation]. (*Dissenting opinion by Mr. Hernández Denton, Associate Justice, joined by Mrs. Naveira de Rodón, Associate Justice, 159 D.P.R. 194, 2003*). However, the Judgment in *Pueblo v. Flores-Flores*, 181 D.P.R. 225 (2011) upheld the opinion of the Court of Appeals to the effect that Act No. 54 did not apply to women assaulted by their partners in an adulterous relationship.

Recently, the United States Congress passed and President Barack Obama signed the reauthorization of the federal legislation known as the “Violence Against Women Act” (VAWA) and the language included therein to extend the application thereof to all persons regardless of their sexual orientation, real or perceived gender identity, or immigrant status. Said language is particularly important in regards to nondiscrimination in services provided by the State and federally-funded organizations. It is imperative to adjust our code of laws to the provisions of VAWA in order for the agencies and institutions that receive federal

funds for intervention and protection against domestic violence programs to continue receiving said funds and offering services to eradicate domestic violence in Puerto Rican society.

The amendments to this Act shall have the sole purpose of extending the protection provided by Act No. 54 to all victims of domestic violence within their intimate relationship. None of the provisions of this Act shall affect any laws relating to marriages or the adoption process.

However, the “Act Against Stalking” is hereby amended to extend reasonable processing parameters to offenders and the protection of victims that have an affective or intra-family relationship in a shared household where an intimate relationship has never existed or does not exist, as defined in Act No. 54.

It is the duty of the Legislative Assembly to enact more progressive social laws that provide equal protection to every sector of our society. For such purposes, we deem it pertinent to amend the “Domestic Abuse Prevention and Intervention Act,” to clearly establish that the protection provided thereunder shall be extended to all persons within their respective relationship, regardless of civil status, sexual orientation, gender identity, or immigrant status.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Section 1.2 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 1.2.- Public Policy

The Government of the Commonwealth of Puerto Rico recognizes that domestic violence is one of the most serious and complex problems in our society. Domestic violence lacerates the integrity and dignity of all victims, regardless of the sex, civil status, sexual orientation, gender identity, or immigrant status of the persons involved in the relationship. Upon developing the public policy on this

matter, we must aspire to overcome the difficulties that domestic violence presents to every victim, especially to women and children, when preserving their physical and emotional integrity, assuring their safety, and saving their lives.

Domestic violence is one of the clearest manifestations of the effects inequality has on relationships between men and women. The inequality that causes domestic violence manifests itself in consensual intimate relationships, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship. Discriminatory ideas, attitudes, and conduct also permeate those social institutions called upon to resolve and prevent the problem of domestic violence and its consequences. The efforts of these institutions to identify, understand, and handle abuse have been limited, and are often inadequate.

The Government of the Commonwealth of Puerto Rico reaffirms its constitutional commitment to protect the life, security, and dignity of men and women, regardless of sex, civil status, sexual orientation, gender identity, or immigrant status. It also recognizes that domestic violence violates the integrity of a person, his/her family, and members thereof, and constitutes a serious threat to the stability and preservation of the civilized coexistence of our People.

As public policy, the Government of the Commonwealth of Puerto Rico assertively repudiates domestic violence as it contravenes the values of peace, dignity, and respect that the People wish to keep for individuals, families, and the general community. This public policy promotes the development, establishment, and strengthening of effective measures to offer protection and assistance to victims, options for the rehabilitation of the offenders, and strategies for the prevention of domestic abuse.”

Section 2.- 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 shall have the meaning expressed below:

- (a) Law enforcement officer...
- (b) Shelter...
- (c) Sheltered...
- (d) Cohabitation.- Shall mean maintaining a consensual intimate relationship similarly situated to a spouse regarding cohabitation, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship.
- (e) Employee (male or female)...
- (f) Grave emotional harm...
- (g) Intimidation...
- (h) Order for protection...
- (i) Employer...
- (j) Persecution...
- (k) Respondent...
- (l) Petitioner...
- (m) Intimate relationship.- Shall mean the relationship between spouses, former spouses, persons who are cohabiting or have cohabited, persons who have or have had a consensual relationship, and persons who share a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship.
- (n) Sexual relations...
- (o) Court...

(p) Domestic abuse.- Shall mean a constant pattern of conduct involving physical force or psychological abuse, intimidation or persecution against a person by his/her spouse, former spouse, a person with whom he/she cohabits or has cohabited, with whom he/she has or has had a consensual relationship, or a person with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship, to physically harm them, their property, or another person, or to cause him/her serious emotional harm.

(q) Psychological abuse...”

Section 3.- Section 2.1 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 2.1.- Restraining Orders

Any person who has been the victim of domestic abuse or conduct which constitutes said offense as classified in this Act or in the Penal Code of the Commonwealth of Puerto Rico or in any other special law, within the context of an intimate relationship, as defined in subsection (m) of Section 1.3 of this Act, may resort to the court and request a restraining order *motu proprio*, through legal counsel, or through a law enforcement officer without the need of having made previous reports or complaints.

...”

Section 4.- 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 his/her spouse, former spouse, or the person with whom he/she cohabits or has cohabited, or the person with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation,

gender identity, or the immigrant status of the persons involved in the relationship, in order 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 person, or to cause serious emotional harm, shall be guilty of a fourth-degree felony in the upper end of the range.

...”

Section 5.- Section 3.2 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.2.- Aggravated Abuse

The penalty corresponding to a third-degree felony in the lower end of the range shall be imposed if abuse, as classified in this Act, has been committed against the spouse, former spouse, or the person with whom he/she cohabits or has cohabited, or with whom he/she has or has previously had a consensual relationship, or with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or immigrant status of the persons involved in the relationship, upon the existence of one or more of the following circumstances:

(a) When entering the residence of the person or the place in which he/she is sheltered and the abuse is committed therein, in the case of spouses or cohabiters who are separated, or when there is a restraining order directing one of the persons to vacate the residence, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship; or

(b) ...

(c) ...

(d) ...

(e) ...

- (f) ...
- (g) ...
- (h) ...
- (i) ...
- (j) ...

The court may order restitution in addition to the term of imprisonment thus imposed.”

Section 6.- 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 to cause harm to his/her spouse, former spouse, or the person with whom he/she cohabits or has cohabited, or with whom he/she has or has had a consensual relationship, or with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship, or to destroy property cherished by the victim, except that which is exclusively owned by the offender or another person, shall be guilty of a fourth-degree felony in the upper end of the range.

...”

Section 7.- 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 Liberty

Any person who uses violence or intimidation against his/her spouse, former spouse, or the person with whom he/she cohabits or has cohabited, or with whom he/she has or has had a consensual relationship, or with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship, 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 victim of liberty with his/her knowledge, shall be guilty of a third-degree felony in the lower end of the range.

...”

Section 8.- Section 3.5 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.5.- Sexual Assault in an Intimate Relationship

As set forth below imprisonment shall be imposed on any person that commits a non-consensual sexual act against a current spouse or former spouse, or the person with whom he/she cohabits or has cohabited, or with whom he/she has or has had a consensual relationship, or with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or immigrant status under any of the following circumstances:

(a) ...

(b) ...

(c) ...

(d) ...

...”

Section 9.- Section 3.6 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.6.- Deviation from Procedure

After trial and upon conviction, or if the accused pleads guilty to any of the offenses classified in this Act, the court may, *motu proprio* or at the request of the prosecutor or the defense, suspend all procedures and release the convict on probation; provided, that he/she enrolls in a diversion program for persons who exhibit abusive behavior in an intimate relationship, as defined in subsection (m) of

Section 1.3 of this Act. Prior to making any determination to that respect, the Court shall hear the Prosecution.

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

(a) If it involves a person who has not been previously convicted and imprisoned as the result of a final and binding judgment or is benefitting from a diversion program under this Act or a suspended sentence for committing offenses established in this Act or similar offenses established in the laws of the Commonwealth of Puerto Rico or the United States against his/her spouse, former spouse, person with whom he/she cohabits or has cohabited, person with whom he/she has or has had a consensual relationship, or person with whom he/she shares a child in common, regardless of the sex, civil status, sexual orientation, gender identity, or the immigrant status of the persons involved in the relationship.

(b) ...

(c) ...

(d) ...

...”

Section 10.- Section 3.10 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 3.10.- Assistance to the Victim of Abuse

Whenever a law enforcement officer intervenes with a person claiming to be a victim of abuse, regardless of his/her sex, civil status, sexual orientation, gender identity, or immigrant status, such officer shall take every measure he/she deems necessary to protect the victim from further abuse. Law enforcement officers shall take the following steps, among others:

...”

Section 11.- Section 4.3 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 4.3.- Substitute Address Register

...

The organization of the Substitute Address Register for Victims of Domestic Violence shall provide this protection to any person residing in Puerto Rico regardless of his/her address of origin or immigrant status. Furthermore, such protection shall be likewise extended to any victim of domestic violence who has established his/her residency in Puerto Rico or who, for such reason, has moved to another jurisdiction. For purposes of this protection, the words ‘residence,’ ‘residential,’ and ‘resides’ are to be understood within their common and ordinary meaning.

...”

Section 12.- Section 5.3 of Act No. 54 of August 15, 1989, as amended, is hereby amended to read as follows:

“Section 5.3.- Rules for Civil and Criminal Actions

Except as otherwise provided in this Act, the civil provisions established herein shall be governed by the Rules of Civil Procedure of 2009, as amended.

...”

Section 13.- Section 4 of Act No. 284 of August 21, 1999, as amended, is hereby amended to read as follows:

“Section 4.- Criminal Conduct; Penalties

(a) Any person who intentionally exhibits a constant or repetitive pattern of stalking directed at intimidating a specific person to the effect that said person or any member of his/her family could suffer personal or property damage; or that maintains said type of conduct knowing that a certain person could reasonably feel intimidated, shall be guilty of a misdemeanor.

The court may order restitution in addition to the term of imprisonment thus imposed.

(b) Stalking, as classified in this Act, shall constitute a fourth-degree felony, if one or more of the following circumstances exist:

(1) ...

(8) When committed against a person with whom he/she has an affective or intra-family relationship in a shared household where no intimate relationship has ever existed, as defined by Act No. 54 of August 15, 1989, as amended.”

Section 14.- Section 5 of Act No. 284-1999, as amended, is hereby amended to read as follows:

“Section 5.- Issuance of Restraining Orders

(a) ...

(b) ...

(1) ...

(5) Order the respondent to vacate the residence he/she shares with the petitioner, regardless of the right claimed over the same; provide any temporary measure regarding the use and possession of the residence that the respondent was ordered to vacate and any personal property therein; order the owner or person in charge of the residence that the respondent was ordered to vacate to take any necessary measures to prevent the violation of said court order; and issue any order needed to carry out the purposes and public policy of this Act.”

Section 15.- Implementation: Action Plan

The Puerto Rico Police, the Office of the Women’s Advocate, the Office of Court Administration, the Department of Corrections and Rehabilitation, the Office of Pretrial Services, and all other components of the Puerto Rico Judicial System, in conjunction and consultation with organizations that offer services to victims of

domestic violence, professional associations, and experts from the academia are hereby directed to adopt action plans to adjust their procedures, revise their intervention and data collection protocols, and to train their personnel in order to protect all victims of domestic violence, regardless of their sex, civil status, sexual orientation, gender identity, or immigrant status.

Section 16.- Scope

None of the provisions of this Act shall affect any laws regarding marriages or the adoption process.

Section 17.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section or part of this Act were held to be null or unconstitutional, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, or part thereof thus held to be null or unconstitutional.

Section 18.- Effectiveness

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 23-2013 (H. B. 488)** of the **1<sup>st</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Sections 1.2, 1.3, 2.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.10, 4.3, and 5.3 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to extend the protection provided thereunder to all persons regardless of their marital status, sexual orientation, gender identity, or immigrant status; and amend Act No. 284-1999, as amended, known as the “Act Against Stalking,” by adding a subsection 8 to Section 4, and a subsection 5 to Section 5 in order to extend the protections provided thereunder to persons that hold an affective or intra-family relationship in a shared household where no intimate relationship exists.

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

In San Juan, Puerto Rico, on this 28<sup>th</sup> day of March, 2017.

Roger J. Iglesias-Sepúlveda, Esq.  
Director