

(H. B. 743)

**(No. 27-2017)**

(Approved May 19, 2017)

## **AN ACT**

To amend Articles 74, 152, 177, 179, 182, 184, 194, 197, 201, 230, 248, 268, 281, and 307; add new Articles 200, 200A, 242A, and 247 to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” in order to restore certain provisions to the penal code of laws as well as certain penalties and applicable provisions; make technical amendments; and for other related purposes.

### **STATEMENT OF MOTIVES**

The Island’s inhabitants are victims of violence and the collateral damage of an underground economy supported by drug trafficking and worsened by the financial crisis that has left thousands of Puerto Ricans unemployed. Meanwhile, crime rates in Puerto Rico paint a bleak picture rife with bullet casings, murders, drug trafficking, and theft that reveal to us a harsh reality. The rise in juvenile delinquency, aggravated by the high school dropout rate, has seriously affected the quality of life on the Island.

The Anti-crime Plan proposed by Governor Ricardo Rosselló-Nevarés in the Plan for Puerto Rico consists of several phases that work in an integrated and synergistic manner; thus, its success is contingent on the implementation of preventive-punitive, preventive-corrective, and preventive-remedial measures. Said actions are accompanied by the anticipation, recognition, evaluation of results, immediate action, and risk reduction and elimination.

For decades, Puerto Rico has been experiencing a crime wave, which many believe has no solution. Crimes are committed regardless of the time, day or place. They are committed in broad daylight, at malls, in the streets, at homes, businesses,

etc. Puerto Ricans do not feel safe anywhere, therefore, this situation cannot continue. This Government is committed to its citizens and their safety, and we are confident that we shall be able to combat crime.

At present, the citizens are very distrustful of Puerto Rico's justice system. As a result of said distrust, people no longer report crimes to which they have fallen victim on countless occasions. As recently as 2015, a judge from the Court of First Instance of Puerto Rico was found guilty at the federal level of judicial corruption charges for acquitting a friend of his on criminal charges in exchange for bribe payment. Cases such as this one must be eradicated. With this amendment to the Penal Code we take a step toward preventing this situations from occurring in the future.

This Act amends several Articles of the Puerto Rico Penal Code of 2012 in order to toughen certain provisions and punishments. The preceding Administration lessened the punishment for certain offenses. As a result, more criminals are not properly rehabilitated and become repeat offenders. The offense of burglary is an example of this. The amendments to the Penal Code implemented by Act No. 246-2014, reclassified said offense from a felony to a misdemeanor. Burglary is a serious offense because it can lead to more violent crimes. The Legislative Assembly is seeking to clarify this type of actions though this Act. Likewise, it is hereby clarified that any person convicted of an offense punishable by a term of imprisonment of 99 years may be eligible to request parole to the Parole Board after serving 35 calendar years of his sentence. Likewise, other offenses that were eliminated by the Legislative Assembly in the past are reinstated.

Furthermore, this Act seeks to incorporate new Articles to the Penal Code in order to address the citizens' claims for protection from criminal activity that jeopardizes the life, property, and safety of Puerto Ricans. The foregoing compels the government to take decisive action to protect the people. Bearing this in mind,

the new Articles incorporated hereunder to the Penal Code seek to provide the Government with legal tools to effectively address the antisocial and harmful behavior that affects peaceful coexistence among citizens. None of this shall affect rights such as freedom of speech, privacy, or private property which are enshrined in our Constitution and established by case law by the Supreme Court of Puerto Rico.

As stated above, the people need to reestablish trust in our criminal and justice systems. This Legislative Assembly's commitment to the fight against crime is unbreakable. It is time to take all the necessary measures to advance this cause to protect life, property, and safety of Puerto Ricans and the tens of thousands of visitors we receive. This Act undoubtedly is a step in the right direction.

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

Section 1.- Article 74 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code, is hereby amended to read as follows:

"Article 74.- Rules to Determine Recidivism.-

The following rules shall apply to determine recidivism:

(a) A previous offense shall not be taken into consideration if, between said offense and the next, a period of ten (10) years have elapsed since the person served the sentence for said offense.

(b) ...

(c) Any conviction in a jurisdiction other than Puerto Rico for an act that constitutes a felony in Puerto Rico shall be taken into consideration. If the act is classified as a misdemeanor in Puerto Rico, it shall not be taken into consideration.

(d) ..."

Section 2.- The second paragraph of Article 152 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code," is hereby amended to read as follows:

“Article 152.- Transmission or Retransmission of Obscene Material or Child Pornography.-

...

When the material consists of child pornography, the person shall be guilty of a felony and punished by imprisonment for a fixed term of eight (8) years. If the convicted person is a juridical person, it shall be punished by a fine of up to thirty thousand dollars (\$30,000).”

Section 3.- The second paragraph of Article 177 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 177.- Threats.-

...

The person shall be guilty of a felony and punished by imprisonment for a fixed term of three (3) years, if as a result of said threat a building, meeting place, or public transportation facility is evacuated.”

Section 4.- Article 179 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 179.- Offenses Against the Right of Assembly.-

Any person who interrupts or hinders by force, intimidation, and/or violence a lawful and peaceful assembly, regardless of the subject or purpose thereof, shall be guilty of a misdemeanor. If it is an official meeting held, called, or organized by a governmental entity or body, whether of the executive, legislative or judicial branch, shall be guilty of a misdemeanor punishable by imprisonment for a fixed term of one (1) year.”

Section 5.- Article 182 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 182.- Aggravated Unlawful Taking.-

Any person who commits the offense of unlawful taking described in Article 181, and takes public property or funds, shall be punished by imprisonment for a fixed term of fifteen (15) years. Any person who takes goods the value of which is ten thousand dollars (\$10,000) or more, shall be punished by imprisonment for a fixed term of eight (8) years. If the convicted person is a juridical person, it shall be punished by a fine of up to thirty thousand dollars (\$30,000).

...”

Section 6.- The fourth paragraph of Article 184 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“...

The provisions herein notwithstanding, any person who commits this offense after a conviction for the same offense shall be guilty of a misdemeanor and punished by imprisonment for a fixed term of three (3) years.

...”

Section 7.- Article 194 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 194.- Burglary.-

Any person who enters a dwelling, building, or other construction or structure or its appurtenances or annexes for the purpose of committing any crime involving unlawful taking or a felony shall be guilty of a felony and punished by imprisonment for a fixed term of three (3) years.”

Section 8.- The second paragraph of Article 197 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 197.- Entering the Estate of Others.-

...

Entering a farm or estate of another and committing the offense of unlawful taking and the unlawfully taken property is an agricultural product shall constitute a misdemeanor punishable by imprisonment for a fixed term of three (3) years.

When the monetary value of the agricultural product taken exceeds ten thousand dollars (\$10,000), the person shall be guilty of a felony and be punished by imprisonment for a fixed term of eight (8) years.”

Section 9.- A new Article 200 is hereby added to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to read as follows:

“Article 200.- Obstruction of or Impeding Works.-

Any person who, with the intent to temporarily or permanently obstruct any public or private construction works or ground grading that has been granted the permits, authorizations, or endorsements of the pertinent agencies, engages in the following acts, shall be guilty of a felony and punished by imprisonment for a fixed period of three (3) years:

(a) Obstructing the entry or access of employees, vehicles, and persons, including suppliers of materials, authorized by the owner, contractor, or person in charge of the property where the works or ground grading is being carried out.

(b) Seize the land, machinery, or spaces that are a part of the construction works or ground grading.

The Court may also impose restitution.”

Section 10.- A new Article 200A is hereby added to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to read as follows:

“Section 200A.- Interference with Tourist Activities.

Any person who, intentionally, permanently or temporarily obstructs and/or hinders the access and/or use and/or enjoyment of any tourist activity, as defined in this Article by engaging in the acts listed below, shall be guilty of a misdemeanor:

(a) Acts of violence and/or intimidation, that is, an act of violence and/or intimidation shall be understood as an act the commission of which involves the use, attempted use of force or threat of physical force against any person and/or property.

(b) Seize and/or take control -without legal authority- of private land, spaces, and/or facilities that are part of a tourist activity with the intent to restrict, limit and/or impede participation in and/or free enjoyment of any tourist activity.

For purposes of this Act, tourist activity shall mean any act that is performed within the following private tourist spaces: hotels, condo-hotels, *paradores*, agro-lodgings, vacation clubs, theme parks, lineal trails and/or passive recreation areas, sports facilities operated by, or associated with a hotel, or within a tourist resort, tourist marinas, and/or private facilities in port areas for tourist purposes.

If the convicted person is a juridical person, it shall be punished by a fine of up to thirty thousand dollars (\$30,000).

The Court may impose restitution.”

Section 11.- Article 201 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 201.- Affixing of Signs.-

Any person who pastes, affixes, prints or paints any notice, advertisement, sign, poster, engraving, banner, picture, ambiguous phrase, writing, drawing, figure or any other similar medium on any private property without the consent of the owner, custodian, or person in charge, regardless of the subject, article, person,

activity, theme, concept or topic to which reference is made therein, shall be guilty of a misdemeanor. If the aforementioned act is performed on public property except, in posts and columns, said person shall be guilty of a misdemeanor punishable by imprisonment for a fixed term of one (1) year.

The court may also impose restitution.”

Section 12.- Article 230 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 230.- Arson.-

Any person who, intentionally, knowingly or recklessly, endangers the life, health or physical integrity of persons by setting a building or property on fire shall be punished by imprisonment for a fixed term of eight (8) years. If the convicted person is a juridical person, it shall be punished by a fine of up to thirty thousand dollars (\$30,000).

To constitute arson, it shall not be necessary that the building or property be destroyed, setting fire to any material part thereof shall suffice.

...”

Section 13.- A new Article 242A is hereby added to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to read as follows:

“Article 242A.- Inciting to Violence.-

Any person who incites or promotes the use of force, violence and/or intimidation for the commission of an offense against a person or property, through any means, including telematics communication systems and/or any other mode of information dissemination, publication, or distribution shall be guilty of a misdemeanor punishable by imprisonment for a fixed term of one (1) year. However, the person shall be guilty of a felony punishable by imprisonment for a term of three (3) years, if a felony is committed as a direct result of the incitement.”



Section 14.- A new Article 247 is hereby added to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to read as follows:

“Article 242A.- Obstructing Access to or Operations in Educational and Health care Institutions or Buildings where Government Services are Offered to the Public.

Any person who, without legal authority, hinders the rendering of services or access to an educational or health care institution, or hinders the rendering of services or access to buildings where government services are offered to the public, shall be guilty of a misdemeanor.

For the purposes of this Article, educational institution shall mean any public or private elementary, middle, or high school, university, institute, vocational or technical school that offers study or skill building programs to children, youth or adults in Puerto Rico.

In case of health care facilities, it shall mean establishments certified and authorized to operate as such by the State, as provided and defined in the “Health Facilities Act” Act No. 101 of June 26, 1965, as amended, such as: a hospital, health care center, public health unit, diagnostic or treatment center, public health services, long-term care facility, rehabilitation center, medical facility for persons with disabilities, mental health center, psychosocial rehabilitation center, chronic illness hospital, general hospital, mental health hospital, tuberculosis hospital, nonprofit health care facility.”

Section 15.- Article 248 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 248.- Use of a Disguise while Committing an Offense.-

A person shall be guilty of a misdemeanor if, such person wears a mask, hairpiece, makeup, dye, or any other costume, whether fully or partially, that temporarily or permanently alters his physical appearance for the purpose of:

(a) Avoiding being discovered, recognized or identified in the commission of an offense.

(b) Concealing, avoiding being arrested, fleeing, or escaping after being reported, prosecuted, or sentenced for the commission of any offense.

(c) Altering or hindering ordinary activities in a public education facility, health care facility, or government building.

Said person shall be punished by imprisonment for a fixed term of three (3) years and be guilty of a felony if the nature of the offense committed or attempted is serious.”

Section 16.- The second paragraph of Article 268 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 268.- False Statements or Allegations of an Offense.-

...

If the alleged false statement constitutes a felony, said person shall be guilty of a felony and be punished by imprisonment for a fixed term of three (3) years.”

Section 17.- Article 281 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code” is hereby amended to read as follows:

“Article 281.- Impeding or Tampering with a Witness.-

Any person who, without any legal justification, impedes, hinders or attempts to hinder, dissuades or attempt to dissuade another, who is or may be a witness, from attending or testifying in any investigation, proceeding, hearing, or any judicial, legislative or administrative matter or in any other process authorized by law, shall be punished by imprisonment for a fixed term of three (3) years.”

Section 18.- Article 307 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 307.- Transition Clause for the Imposition of Punishments under Special Penal Laws.-

Felonies included by special penal laws under the felony classification system of Act No. 149-2004, as amended, known as “Penal Code of the Commonwealth of Puerto Rico” shall be subject to the following punishment, until they are amended and adjusted to the fixed sentencing system adopted under the Code of 2012, as amended:

(a) First Degree Felony – shall carry a punishment of imprisonment for a fixed term of ninety-nine (99) years. In such case, the person may be considered for parole by the Parole Board after serving thirty-five (35) calendar years of his sentence, or ten (10) calendar years, in the case of a juvenile tried and sentenced as an adult.

(b) Severe Second Degree Felony – shall carry a punishment of imprisonment for a fixed term of twenty-five (25) years. In such case, the person may be considered for parole by the Parole Board after serving seventy-five percent (75%) of the term of imprisonment imposed.

(c) Second Degree Felony – shall carry a punishment of imprisonment for a fixed term of fifteen (15) years. In such case, the person may be considered for parole by the Parole Board after serving seventy-five percent (75%) of the term of imprisonment imposed.

(d) Third Degree Felony – shall carry a punishment of imprisonment, therapeutic confinement, home confinement, community service, or a combination thereof, for a fixed term of eight (8) years. In such case, the person may be considered for parole by the Parole Board after serving seventy-five percent (75%) of the term of imprisonment imposed.

(e) Fourth Degree Felony – shall carry a punishment of imprisonment, therapeutic confinement, home confinement, community service, or a combination thereof, for a fixed term of three (3) years. In such case, the person may be considered for parole by the Parole Board after serving seventy-five percent (75%) of the term of imprisonment imposed.

(f) ...”

#### Section 19.- Severability

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to one person or circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 20.- Effectiveness

This Act shall take effect immediately after its approval.