

(S. B. 358)

(No. 32-2021)

(Approved August 24, 2021)

AN ACT

To amend Section 3.10 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to provide that a representative of the Prosecutor’s Office and a mediator from the Women’s Advocate Office shall be present, without exception, in every probable cause hearing regarding any of the offenses prescribed in this Act.

STATEMENT OF MOTIVES

Executive Order 2021-013 was issued on January 25, 2021, declaring a state of emergency in Puerto Rico as a result of the rise in cases of gender-based violence.

Executive Order 2021-013 defines gender-based violence

[...] as conducts that cause physical, sexual, or psychological harm to another and are based on gender stereotypes created by men and women. Gender stereotyping refers to opinions and prejudices based on the social roles or the gender power relations, which are assigned to men and women by a given culture.

The truth is that we have been experiencing a gender-based violence epidemic for several years that has taken the lives of hundreds of Puerto Rican women. Many of the aforementioned cases had already reached a certain stage in the judicial process whether through the issuance of a protective order or the filing of criminal charges. In these cases, the court process begins with the first hearing, in which the

judge hears testimony and determines whether there is probable cause to arrest the defendant and continue with the criminal proceeding until the day of the trial. In general, prosecutors are not required to attend probable cause hearings and such hearings are only attended by the investigating officer and the victim. However, cases involving violations of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” Section 3.10 thereof, requires that a prosecutor be present if there is serious bodily injury; the offense is committed while a protective order was in effect; or it involves sexual assault. The same provision also grants the Department of Justice discretion to send a representative on behalf of the Prosecutor’s office in any other case brought for violations of the provisions of Act No. 54, provided that resources so allow. Thus, in accordance with the discretion granted under Act No. 54, *supra*, the Department of Justice rarely sends its prosecutors to probable cause hearings.

The presence of a prosecutor at probable cause hearings would help victims feel more confident and safe, for those public officials have the necessary legal expertise to handle these cases. There are several reasons for making a no probable cause determination, including that no offense was actually committed. However, there are situations involving the management and presentation of evidence that can be rectified by having a prosecutor present. For instance, when the victim is emotionally distressed and unable to give testimony to identify the elements of the offense, or when the investigating officers fail to present the required evidence. The prosecutor’s presence during said process would be of great benefit in such a situation. Prosecutors may assist in guiding and managing the presentation of evidence, as well as in identifying any factual or legal issues right from the start, and to correct them if possible, so that the case is presented according to law thereby preventing the dismissal thereof.

This Act seeks to amend Section 3.10 so that a prosecutor is present during probable cause hearings in all cases brought for violations of the provisions of Act No. 54 and not just in certain cases or at the discretion of the Department of Justice. The aforesaid Executive Order also provides that “[w]e have enacted legislation to address violence, however, it is necessary to enforce, oversee, and follow up on these measures to achieve changes to protect the people.”

Furthermore, Section 15 of the Executive Order directs the Office of Management and Budget, in conjunction with FAFAA, to identify the necessary funds within the Certified Budget, federal programs, the Emergency Reserve and/or any other available fund to achieve the objectives of the emergency declaration. It further establishes that as of Fiscal Year 2021-2022 and thereafter, every government agency, without exception, is hereby directed to identify funds in their budget to allocate resources to achieve the objectives of this emergency declaration and/or programs to prevent and address gender-based violence. Executive Order 2021-013 states that the aforementioned resources shall include, but not be limited to, gender-based violence prevention, education, and protection programs and safety measures aimed at combating gender-based violence.

Therefore, in view of the gender-based violence state of emergency our Island is currently experiencing, all agencies concerned should adjust their operating and resource allocation plans. The lack of resources should not be an excuse to justify a prosecutor’s absence in cases brought for violations of Act No. 54. In that sense, this Bill clarifies that the Department of Justice has the duty to assign prosecutors to these probable cause hearings.

In accordance with its police power to protect life and maintain public order, this Legislative Assembly deems this legislative measure to be necessary in order to protect Puerto Rican women who face a clear, real, and palpable danger given the high incidence of gender-based violence cases and femicides. The phrase “Not one

more” shall transform from mere words into actions to be taken by all Commonwealth of Puerto Rico institutions together with the civil society.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 3.10 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” is hereby amended to read as follows:

“Section 3.10.- Assistance to Victims of Abuse.

Whenever law enforcement officers intervene with a person claiming to be a victim of abuse, they shall take any measure deem appropriate to protect the victim from further abuse regardless of the sex, civil status, sexual orientation, gender identity, or immigrant status of such person. Law enforcement officers shall take the following steps, among others:

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

A prosecuting attorney shall be required to appear in every probable cause hearing in all criminal cases brought under this Act, without discretion, including cases involving violation of a protective order as provided in Section 2.8.

The Women’s Advocate Office shall designate a mediator who shall appear in said judicial proceedings.”

Section 2.- This Act shall take effect upon its approval.