

(S. B. 242)

(No. 34-2018)

(Approved January 21, 2018)

AN ACT

To amend Articles 88 and 89 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” in order to establish that the offenses of incest, sexual assault, lewd acts, human trafficking, aggravated abduction, use of a minor for child pornography, proxenetism, pandering, and aggravated human trafficking shall have no statute of limitations when, at the time the offense was committed, the victim was a minor younger than the age of eighteen (18) and the accused was older than the age of eighteen (18).

STATEMENT OF MOTIVES

Thousands of cases of sexual abuse against children and adolescents are reported every year in Puerto Rico. It is estimated that the number of unreported cases is even higher. The reason being that many are afraid to tell someone what happened to them and/or that the aggressor threatened them. Child abuse may occur within the family circle, by a parent, stepfather, sibling, or other relative, or outside the family circle, for instance, by a neighbor, a caretaker, a teacher, or a stranger.

Global clinical experience indicates that oftentimes, it is only many years after the incident that the victim is able to tell or disclose the sexual abuse they experienced when they were minors, whether because they were threatened, no one believed them, or they felt ashamed, wanted to protect their family, felt guilty, or simply out of fear. The long-term emotional and psychological damage is devastating for the victims.

It is even more unsettling to hear testimonies of social workers who know men and women who were unable to talk about the sexual abuse they were victims of while they were minors, until they reached the age of 30, 40, or 50. These are men and women who spent over half of their lives suffering, frightened, and burdened by the negative consequences that being sexually abused during their childhood entailed.

This Act amends Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” in order to provide that criminal actions for crimes against sexual indemnity, specifically violent crimes, such as sexual assault, lewd acts, and incest involving minors younger than eighteen (18) years of age shall not have a statute of limitations. This shall allow for the prosecution of a sexual offender when the victim is ready to press charges.

The statute of limitations is the manner in which a right is impaired as a result of the lack of exercise thereof within the period fixed by law. The institution of the statute of limitations is one of the most relevant within the framework of Criminal Law, given that it serves to relieve an individual from penal or criminal liability and, in turn, from death or pardon, among other consequences. Some treatise authors argue that statutes of limitations are established because the society’s memory of the offense fades away as time passes by until it disappears completely, as a result of social oblivion.

The statute of limitations is a manner of limiting the exercise of a certain right as a result of legal inaction within a specific length of time. The purpose of establishing a statute of limitations for the filing of an action is to encourage the swift claim of rights while protecting the tranquility of the obligor against the eternal pendency of a civil suit against him or her. *García Pérez v. Corp. Serv. Mujer*, 174 D.P.R. 138 (2008). However, this purpose cannot have precedence over doing justice

to a person who was barely a child at the time he was a victim of a horrible crime, and is only able to report the incident once he has overcome the emotional baggage that it entailed.

In Puerto Rico, there are already some crimes for which no statute of limitation is provided, thus striking a balance between the most compelling interests of the People. Crimes like homicide and kidnapping have no statute of limitations. More recently, through Act No. 51-1993, then-governor Pedro Rosselló also eliminated the statute of limitations for certain crimes against the property, the public function, public funds the judicial function, the public trust, and that because of their nature constitute acts of corruption. Other crimes that have no established statute of limitations in our Penal Code are genocide and crimes against humanity. As a society, we have decided that these crimes are sufficiently serious not to prescribe.

Crimes entailing sexual violence against a minor are some of the vilest crimes that can be committed. It scars the minor for life and robs him of his innocence. The aftermath of such abuse could include alcohol and drug abuse, dropping out of school, issues managing personal relationships, or criminal conduct. In addition to all of this, the social and economic costs this entails are insurmountable.

As a society, we must do everything in our power to eradicate or at least reduce this type of activity. This Act seeks to provide those who for a long time have been in such a profound grief with the opportunity to be heard.

For all of the foregoing, and understanding that one of the most compelling interests is to protect minors younger than the age of eighteen (18) from falling victims of such despicable crimes, this Legislative Assembly deems it necessary to eliminate the statute of limitations for sexual violence crimes committed against minors younger than the age of eighteen (18).

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Article 88 of Act No. 146-2012, as amended, is hereby amended to read as follows:

Article 88.- Offenses Without Statute of Limitations.-

For the following offenses, criminal actions shall not have a statute of limitations: genocide, crimes against humanity, homicide, kidnapping, embezzlement of public funds, forgery of public documents, and all felonies classified under this Code or in a special law committed by a public official or employee in the performance of public duties.

If, at the time the offense was committed, the victim was a minor younger than the age of eighteen (18) and the accused was older than the age of eighteen (18) the following offenses shall not have a statute of limitations: incest, sexual assault, lewd acts, human trafficking, aggravated abduction, use of a minor for child pornography, proxenetism, pandering, and aggravated human trafficking.”

Section 2.- Article 89 of Act No. 146-2012, as amended, is hereby amended to read as follows:

“Article 89.- Calculation of the Statute of Limitations.-

The statute of limitations shall be calculated from the day the offense is committed up to the date on which probable cause for arrest or subpoena is found. In appeal cases, the holding of a hearing to find probable cause for arrest or subpoena shall toll the statute of limitations.

However, when the offenses have a statute of limitations and the victim has not attained the age of eighteen (18) years, the statute of limitations shall be calculated from the date on which the victim reaches the age of eighteen (18) years.”

Section 3.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 34-2018 (S. B. 242)** of the **2nd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend Articles 88 and 89 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code," in order to establish that the offenses of incest, sexual assault, lewd acts, human trafficking, aggravated abduction, use of a minor for child pornography, proxenetism, pandering, and aggravated human trafficking shall have no statute of limitations when, at the time the offense was committed, the victim was a minor younger than the age of eighteen (18) and the accused was older than the age of eighteen (18).

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

In San Juan, Puerto Rico, on this 13th day of December, 2018.

Orlando Pagán-Ramírez
Director