

STATEMENT OF MOTIVES

Article 105 of the Penal Code typifies the crime of lascivious or indecent acts. It comes from Article 260 of the repealed Penal Code. The concept of lewdness and indecency is broadened in the new Code since it is established that every lewd or indecent act in which any one of the circumstances enumerated in it concur is a crime. However, it is our understanding that Article 105 should be amended to include deceit by the author of the crime as another circumstance which should be taken into account when typifying it. The Supreme Court, in an opinion of April 12, 1983, stated that the crime as it is presently written has a loophole that allows that certain types of behavior in which deceit is used cannot be punished as a crime of lewd acts.

The purpose of this legislation is to add a subsection (d) to Article 105 to the effects of establishing that the use of deceitful means which substantially overcome or diminish a victim's will to resist without his consent shall be deemed as one of the circumstances which typify the crime of lewd and indecent acts.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Article 105 of Act No. 115 of July 22, 1974, as amended,³³ is hereby amended to read as follows:

“Lewd and Indecent Acts

Article 105.—

Every person who, without intending to consummate sexual intercourse, commits any indecent or lewd act with another person shall be punished by imprisonment as provided below under any of the following variants:

(a) If the victim is under 14 years of age.

(b) If the victim has been compelled to the act by the use of irresistible physical force or under threat of grave and immediate bodily injury, accompanied by the apparent power of execution or by overcoming or substantially diminishing his will to resist, without his knowledge, by means of hypnosis, narcotics, depressants or stimulants or similar substances or means.

(c) If the victim is unable, through illness or unsoundness of mind whether temporary or permanent, to give legal consent.

³³ L.P.R.A. § 4067.

(d) If the victim has been compelled to the act by the use of deceitful means that overcome or substantially diminish his will to resist, without his knowledge.

The penalty of imprisonment to be imposed for this crime shall be for a fixed term of six (6) years, except when there is a variant of the crime contained in subsection (a) of this article. Should there be aggravating circumstances, the fixed penalty established may be increased to a maximum of eight (8) years; if there should be extenuating circumstances, it may be reduced to a minimum of four (4) years.

Under the variant of the crime referred to in subsection (a) of this article, the penalty of imprisonment shall be a fixed term of eight (8) years. Should there be aggravating circumstances, the fixed penalty established may be increased to a maximum of ten (10) years; if there should be extenuating circumstances, it may be reduced to a minimum of six (6) years.

The court may impose the penalty of restitution in addition to the penalty of imprisonment established in any of aforementioned circumstances.”

Section 2.—This act shall take effect immediately after its approval.

Approved July 9, 1986.

Internal Security—Protection for Victims and Witnesses

(S.B. 394)

[No. 77]

[Approved July 9, 1986]

AN ACT

To establish protective actions and measures that will enable an effective fight against the intimidation of crime victims, witnesses, potential witnesses, their family and other relatives, who risk being attacked in order to prevent their participation in the judicial process; to empower the Secretary of Justice with the necessary authority to implement these protective actions and measures; to require of him the necessary coordination with the

United States Department of Justice in order to benefit from the Victim and Witness Protection Act of 1982 and the Organized Crime Control Act of 1970; to require him to formulate regulations for the protection of victims and witnesses; to appropriate funds and to repeal Act No. 64 of June 22, 1978, as amended.

STATEMENT OF MOTIVES

The active cooperation and participation of victims and witnesses to the commission of a crime is indispensable for the proper operation of our judicial system. Without that decided participation very few delinquents, if any, would be brought before the courts of justice to respond for their crimes.

The victims and witnesses to crimes in the majority of cases live without any protection, exposed to the risk of violent attack, threat or intimidation on the part of the delinquent, his cohorts, friends and relatives, this, in spite of being the determinant in the effective implementation of justice. Such a risk becomes greater due to the frequency with which the delinquents remain free without an arrest being possible or even when arrested quickly return to the free community protected by the right to freedom after posting bail.

Faced with this situation, it is not unusual that victims and witnesses refuse under any excuse whatsoever to appear before the courts to prosecute those who are guilty of a crime. The occasionally well justified deep fear for the personal well-being of their loved ones is stronger than their responsibility as a citizen to contribute to the implementation of justice. In this way our society is deprived of indispensable testimony to prosecute those who are guilty of numerous crimes. Justice and the law are thus thwarted by releasing criminals who probably will continue to commit more and graver crimes against the honest and decent persons in our society.

It should be pointed out that they frequently resort to the ample financial resources, violence and power of the underworld as well as to relationships that facilitate the threatening and eventual silencing of the citizen who could have brought him before the courts. Faced with this social monster, the victim, the witness, the family and the loved ones must battle alone. The Government must protect them. To do otherwise would be to ask too big a sacrifice of them, which is usually fruitless.

The Legislature's concern with this problem is not new. It approved Act No. 64 on June 22, 1978,³⁴ which was later amended through Act No. 36 of June 3, 1982.³⁵ Both legislative measures had as their objective to authorize the Secretary of Justice of Puerto Rico to adopt the necessary measures to protect the prosecution's witnesses and their families.

However, the legal mandate of these statutes lacks the clarity and preciseness to be implemented properly. The problem we seek to correct is of a determining importance for the well-being, serenity and peace of our society. Therefore, this Legislature wishes to establish clearly its interest through this bill for measures to be adopted as soon as possible to guarantee the safety and eventual appearance before the courts of every citizen with knowledge to prosecute those who are guilty of a crime. This protection must be extended to any one who at some time could be called on as witnesses and to their families and loved ones when there is an intention to intimidate them by means of threats.

The responsibility for implementing this act belongs to the Department of Justice. Its administrative control of the district attorneys, and its direct participation in the investigative and judicial process, make it the public agency with greatest capacity and resources to implement effectively this measure. The strict coordination with the Police Corps of Puerto Rico and our courts of justice is also required.

The formulation of complementary regulations is equally important. The Secretary of Justice must seek orientation in the recent federal legislation, Victim and Witness Protection Act of 1982,³⁶ which orients and liberalizes the areas that deserve the most attention when regulating the services to be provided to victims and witnesses.

The approval and effective implementation of this act should result in the peace and safety of our citizens who are asked to participate in the judicial process and for our community in general.

³⁴ Laws of Puerto Rico 1978, p. 199.

³⁵ Laws of Puerto Rico 1982, p. 77.

³⁶ Oct. 12, 1982, P.L. 97-291, 96 Stat. 1248; 18 U.S.C. § 1512 et seq.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Declaration of Public Policy

It is the public policy of the Commonwealth of Puerto Rico to offer protection and assistance to victims and witnesses in judicial proceedings elucidated in the courts as well as during the investigations that are carried out, to promote their full cooperation and participation free from intimidation in those proceedings.

Section 2.—Authority and duty of the Secretary

The Secretary of Justice of Puerto Rico shall have the duty and the authority to establish the necessary measures to prevent the intimidation of victims, witnesses, potential witnesses, their family and relatives, and to provide them with the protection and assistance that is deemed necessary at a given moment to assure their participation in investigative and judicial proceedings. The person to be protected must give his consent in all cases.

Section 3.—Creation of the Division for Protection of Victims and Witnesses

(a) In order to implement the purposes of this act, a Division for the protection and assistance to victims, witnesses, potential witnesses, their family and relatives is hereby created attached to the Special Investigations Bureau of the Department of Justice.

(b) The Protection Division shall be created under a system of cooperation and coordination between the Department of Justice and the Puerto Rico Police so that it shall be made up by enforcement agents of the Puerto Rico Police and personnel appointed by the Secretary of Justice pursuant to the provisions of Section 2A of Act No. 64 of June 22, 1978,³⁷ or under the authority granted to him by this act.

(c) The members of the Puerto Rico Police assigned to the Protection Division shall continue to have the authority, prerogatives and power granted to them by law as law enforcement agents. The members designated by the Secretary of Justice shall have the power to accuse, arrest, seek court orders and have, possess, bear, carry and wield firearms.

³⁷ 25 L.P.R.A. § 962a.

(d) The Protection Division shall render its services throughout the jurisdiction of the Commonwealth of Puerto Rico during twenty-four (24) hours a day. The Secretary shall take the measures that shall allow the extension of protective services throughout the entire island.

Section 4.—Establishment of an emergency line

(a) The Department of Justice shall establish and keep an emergency line in operation twenty-four (24) hours a day to serve crime victims, witnesses, potential witnesses, their family and relatives, who feel threatened by delinquents against whom they have testified or would have to testify.

(b) Every person who qualifies for protection under the provisions of this act shall be instructed about the use of the emergency line.

Section 5.—Other Protection Services

When the circumstances warrant it, the Secretary may take other emergency measures in order to protect the persons who qualify for it hereunder.

(a) He may acquire physical facilities as well as furniture and equipment needed to lodge the victims, witnesses, potential witnesses and their family or relatives for the time he deems necessary by purchase, lease, or in any other fashion.

(b) He may relocate the residence of the person or persons being protected outside the geographical area where they have resided and, in meritorious cases, outside Puerto Rico.

(c) He may order direct surveillance and other security measures at the residence of the affected person, provide protection and transportation at his place of employment and for his family and relatives; and, with the consent of the threatened person, he may use legally and constitutionally permissible electronic methods to investigate threats made against witnesses, victims, their family and relatives, including tracing telephone calls.

(d) In those cases in which the appearance of the witness, victim, their family or relatives in court prevents them from seeking employment, or that for their personal safety it would not be convenient for the witnesses, victims, family or relatives to be employed, he may order the necessary financial assistance as well as the payment of necessary essential services.

(e) He may (subject to prior consent by the affected person) order the necessary measures so that the Registry of Vital Statistics and the other public registries of the Commonwealth of Puerto Rico may change the identity or identification of the witness, victim, their family or relatives in those cases that it is necessary for the person's safety.

Section 6.—Authority to Seek Court Orders

The Secretary may seek a cease and desist order from the courts at any time after an official process has been initiated, addressed to any person who is intimidating or attempting to intimidate, directly or indirectly, a victim, witness, potential witness, their family and relatives. Once it is issued, the Secretary or his representative shall serve notice of the order and the consequences for not obeying it to the accused or suspect through his lawyer if he has one, or personally when he does not have legal counsel.

Section 7.—Referral of Persons qualified to receive protection under this Act

The Secretary shall establish a system for the referral of persons who qualify to receive protection services under the provisions of this act to the Protection and Witness Assistance Division. Referrals shall take place whenever it is suspected that a victim, witness, potential witness, their family or relatives run the risk of threat, attack or any other form of intimidation by the suspect, accused or his family, friends or associates.

The Secretary must consider as sources for referral and information the agencies charged with law and order, other agencies where administrative and quasi-judicial processes are carried out, the courts of the Commonwealth of Puerto Rico and the United States, other officials of the Judicial Branch and the District Attorneys Offices, the Criminal Investigations and Processing Division and the Special Investigations Division of the Department of Justice.

Section 8.—Eligibility for Protection under this Act

The protection benefits provided by this act shall be extended to every person victim of a crime, witness, potential witness, their family or relatives, regardless of the crime's nature or degree, if it is determined that any of the persons mentioned is in danger of suffering threats, aggressions or direct or indirect intimidation in order to dissuade him from participating in the official procedure that is to be pursued, or when an attempt to influence his testimony

is made or when he is exposed to any type of conduct contemplated in Sections 238, 239 and 239A of the Penal Code of Puerto Rico.³⁸

When circumstances so justify it, the protection provided under this act may be extended to qualified persons even after the conclusion of the official process.

Section 9.—Agreements with the United States Department of Justice

The Secretary of Justice shall make the necessary agreements with the United States Department of Justice so that persons who qualify for protection under this act in the Commonwealth of Puerto Rico may resort to the benefits of the Organized Crime Control Act of 1970 (Public Law 91-452; 84 Stat. 922) and the even broader benefits of the Victim and Witness Protection Act of 1982 (Public Law 97-291; 96 Stat. 1248).

Section 10.—Regulations

The Secretary of Justice shall prepare and implement detailed regulations that allow compliance with the objectives of this act sixty (60) days after its approval. These regulations shall also include provisions that integrate the victim's and witnesses's rights covered by the Federal Guidelines for Fair Treatment of Crime Victims and Witnesses in the Criminal Justice System.

Section 11.—Functioning of this act

Section 1.—Short Title

This act shall be known as the "Victims and Witnesses Protection Act".

Section 2.—Definitions

For the purposes of this act, the following terms shall have the meaning expressed herein:

(a) "Victim" means any natural person against whom any crime contemplated by the laws of the Commonwealth of Puerto Rico or the laws of the United States of America has been committed or attempted.

(b) "Witness" means any natural person who has knowledge of the existence or non-existence of facts related to a crime or offense and whose testimony shall be admitted or has been admitted as evidence for any purpose, who has informed any police officer, prosecutor, sociopenal officer, penal guard, judicial official or representative of an investigative entity of the Commonwealth of

³⁸ 33 L.P.R.A. §§ 4434, 4435, 4435a.

any offense; he who has received a summons or order to appear at a proceeding before any magistrate of Puerto Rico or the United States, before the Legislature, or before a legally authorized public agency.

(c) "Potential witness" means any natural person who has knowledge of the existence or non-existence of facts related to a crime or offense.

(d) "Family/relatives" means any natural person with family ties or of another nature with the victim, witnesses and potential witnesses of an offense, who could be victims of threats, aggressions, attacks or other means of intimidation, in order to prevent the participation of such victims, witnesses and potential witnesses in the judicial and investigative process.

(e) "Secretary" means the Secretary of the Department of Justice of Puerto Rico.

(f) "Official proceeding" means any judicial, legislative or administrative proceeding.

Section 3.—Separability

A judicial declaration of unconstitutionality of any part of this act shall not affect the validity of the remaining provisions.

Section 4.—Funds

The funds needed to comply with this act shall be appropriated into the general expense budget of the Special Investigations Bureau of the Department of Justice.

Section 5.—Repeal

The following legal provisions are hereby repealed:

(a) Act No. 64 of June 22, 1978,³⁹ as amended by Act No. 36 of June 3, 1982.⁴⁰

(b) Any other provision that is in conflict with the provisions of this act.

Section 6.—Effectiveness.—This act shall take effect immediately after its approval.

Approved July 9, 1986.

³⁹ 25 L.P.R.A. §§ 961-963.

⁴⁰ 25 L.P.R.A. former § 962a.

Agriculture—Dangerous Animals; Prohibition; Amendment
(S.B. 578)

[No. 78]

[*Approved July 9, 1986*]

AN ACT

To amend the title and Sections 1 and 2 of Act No. 70 of June 23, 1971, in order to empower the Secretary of Agriculture to designate, regulate and prohibit the importing of dangerous animals.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—The title of Act No. 70 of June 23, 1971,⁴¹ is hereby amended to read:

"To prohibit the importing, introduction, possession, acquisition, sale or transfer in Puerto Rico of those animals, eggs or progeny which the Secretary of Agriculture designates as harmful or dangerous; to empower the Secretary of Agriculture to establish regulations to such effects and to fix penalties for violations of the provisions of this act or of the regulations promulgated by virtue hereof."

Section 2.—Section 1 of Act No. 70 of June 23, 1971,⁴² is hereby amended to read:

"Section 1.—The importing, introduction, possession, acquisition, sale or transfer in the Commonwealth of Puerto Rico of such animals, also including mollusca and crustacea, amphibians, reptiles, wild birds, microorganisms, insects, wild mammals, or their eggs or progeny which the Secretary of Agriculture may designate as harmful or dangerous to agricultural interests, cattle and crop raising, horticulture, forestry or wild life, or due to their voracious or poisonous characteristics, that may constitute a threat or risk to the life or safety of human beings, is hereby prohibited."

Section 3.—Section 2 of Act No. 70 of June 23, 1971,⁴³ is hereby amended to read:

⁴¹ 5 L.P.R.A. § 1601 nt.

⁴² 5 L.P.R.A. § 1601.

⁴³ 5 L.P.R.A. § 1602.