

(H. B. 1943)

(No. 85-2014)

(Approved July 9, 2014)

AN ACT

To repeal Act No. 248-2012, better known as the “Child Welfare Expedited Administrative Proceedings Act”; amend Sections 21 and 22 of Act No. 186-2009, as amended, known as the “Comprehensive Adoption Proceeding Reform Act of 2009”; amend Sections 21-A and 21-D of Act No. 24 of April 22, 1931, as amended; and amend Sections 23, 32, 37, 39, 42, 49 and 52 of Act No. 246-2011, known as the “Child Safety, Well-being, and Protection Act.”

STATEMENT OF MOTIVES

It is common knowledge that the Commonwealth of Puerto Rico is going through a difficult economic situation that requires the immediate implementation of measures so as to ensure proper control and management of the Government’s limited resources. Faced with such a situation, this Legislative Assembly deems it necessary to restructure some public instrumentalities in order to achieve a more efficient government that reduces or eliminates the duplication of roles and consolidates resources to maximize the use of public funds and streamline government processes. All of the foregoing is consistent with the present Administration’s commitment to establishing a real policy of fiscal responsibility.

The Constitution of the Commonwealth of Puerto Rico in Article III, Section 16, vests in the Legislative Assembly one of the most important powers for the operation of the Commonwealth: “the power to create, consolidate, or reorganize executive departments and to define their functions.” The authority to configure the structuring of all government bodies on which the duty to administer the public resources and provide services to the People falls upon stems therefrom. The manner

in which every agency, administration, instrumentality, or public corporation is configured in regards to its functioning and operation determines the success or failure of the public policies that originally justified their creation.

Through Act No. 248-2012, better known as the “Child Welfare Expedited Administrative Proceedings Act,” an administrative body was created as an additional mechanism to address adoption proceedings, emergency custody determinations, waiver of reasonable efforts, and termination of parental rights pursuant to Act No. 246-2011.

Said Act created ten (10) Administrative Law Judge positions assigned to different regions of the Department of the Family. These judges earn a minimum salary of seventy-two thousand dollars (\$72,000). Among their duties under the law, Administrative Law Judges have the power to conduct hearings, administer oaths, direct and allow the parties to use information discovery to expedite proceedings and the resolution of controversies, hear testimonies, and any other evidence through audio resolution and video recordings to establish the record of the case. In addition, they direct, order, and allow the parties to hold meetings and settlement discussions, among others. Lastly, the Act provides that any party aggrieved by a determination of these judges may initiate an ordinary proceeding in the Court of First Instance.

Evidently, Act No. 248-2012 failed to consider the burden the creation of ten (10) Administrative Law Judge positions, with a minimum salary of seventy-two thousand dollars (\$72,000), would place on the treasury. The foregoing coupled with the implementation of this Act has resulted in a duplication of efforts because Section 4 therein establishes that administrative courts would exercise jurisdiction concurrently with the courts. Therefore, the petitioner has the option of filing his case with the Administrative Judge or the Court, as he deems convenient.

Undoubtedly, the creation of these positions was a poor management decision that, now more than ever, does not fit into the economic and government framework of the Commonwealth of Puerto Rico. Thus, this Legislative Assembly is compelled to promptly correct such deficiency in the government structure.

In accordance with the power vested on the Legislative Assembly by the Constitution of the Commonwealth of Puerto Rico in Section 16, Article III, this Act orders the elimination of such positions. Thus, the system's original state is restored so that adoption proceedings, emergency custody determinations, waiver of reasonable efforts, and termination of parental rights are addressed exclusively by the Courts of the Commonwealth of Puerto Rico with jurisdiction, pursuant to Act No. 246-2011, as amended.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Act No. 248-2012, known as the "Child Welfare Expedited Administrative Proceedings Act," is hereby repealed, including the positions created thereunder.

Section 2.- The first paragraph of Section 21 of Act No. 186-2009, as amended, known as the "Comprehensive Adoption Proceeding Reform Act of 2009," is hereby amended to read as follows:

"Section 21.- Adoption Proceedings for Minors Released from Parental Rights.

In cases in which a minor has been released from parental rights, whether through ordinary procedure in cases of abuse under Act No. 246-2011, known as the 'Child Safety, Well-being, and Protection Act,' or any subsequent law, or through the voluntary surrender of custody and relinquishment of parental rights procedure established in Section 20 of this Act, the movant may file a petition for adoption

with the court for the adoption of said minor, subject to compliance with procedural requirements that are necessary in order for such minor to be placed in an adoptive home duly qualified by the Department, as soon as practicable.

...”

Section 3.- Section 22 of Act No. 186-2009, as amended, known as the “Comprehensive Adoption Proceeding Reform Act of 2009,” is hereby amended to read as follows:

“Section 22.- The Department shall diligently promote termination of parental rights in all cases in which the permanency plan for the minor is adoption. Once the Department assumes guardianship of the minor, the Department or the adoption agency duly licensed by the Department shall execute a placement agreement with a duly qualified adopting party with priority in accordance with the Register. The Department or the adoption agency shall execute a placement agreement prior to terminating the parents’ rights over the minor, only by exception. In such cases, the placement agreement shall set forth that the relinquishment of the parents’ rights over the minor has not yet taken place.

Once the minor is released from parental rights, and immediately after the placement agreement has been executed, the Department, the adoption agency, or the adopting party shall begin adoption proceedings. Once filed with the Court it shall be subject to the provisions of Act No. 186-2009, as amended, and Act No. 9-1995, as amended. For such purposes, the Department or the adoption agency shall expeditiously submit a report on the expert social study to the court in order to decide on the petition. Only expert social studies of over one (1) year shall be updated. The Department or adoption agency shall immediately notify the adopting party of any proceedings instituted in relation to the minor, to which the adopting party is not a party.

Regarding Adoption Agreements executed during pregnancy, the Department shall exercise due diligence to identify the biological father and to notify him of his rights, pursuant to the provisions of this Act. The Department shall assume guardianship over the minor as of his date of birth. The placement of the minor shall be conducted pursuant to the adoption agreement executed with the adopting party. Once the seven (7)-day rescission term has elapsed, the petitioners shall institute adoption proceedings. Once filed with the Court, it shall be subject to the provisions of Act No. 9-1995, as amended. For such purposes, the Department or the adoption agency shall expeditiously submit a report on the expert social study to the court in order to decide on the petition. Only expert social studies of over one (1) year shall be updated. The Department or adoption agency shall immediately notify the adopting party of any proceedings instituted in relation to the minor, to which the adopting party is not a party.

In cases of Voluntary Surrender of a Minor, the Department shall assume guardianship upon execution of the agreement. The Department shall exercise due diligence in identifying the recorded father or mother who has not agreed to surrender such minor and notify him of his rights, pursuant to the provisions of this Act. Once the fifteen (15)-day rescission term has elapsed, the Department, the adoption agency, or the adopting party may execute a placement agreement. Subsequently, the petitioners shall initiate the adoption proceedings. Once filed with the Court, it shall be subject to the provisions of Act No. 9-1995, as amended. For such purposes, the Department or the adoption agency shall expeditiously submit a report on the expert social study on the adopting party. Only expert social studies of over one (1) year shall be updated. The Department or adoption agency shall immediately notify the adopting party of any proceedings instituted in relation to the minor, to which the adopting party is not a party.

Adopting parties who have executed an adoption agreement or a placement agreement with the Department may:

1. File a petition for adoption with the Court pursuant to the provisions of Act No. 9-1995, as amended.
2. Intervene as a party in any proceedings concerning the minor, such as actions for filiation and contest of termination of parental rights, among others. To such effect, they may present expert evidence, among others.
3. Request the consolidation of other court proceedings concerning the minor together with the court proceedings for adoption.”

Section 4.- Section 21-A of Act No. 24 of April 22, 1931, as amended, is hereby amended to read as follows:

“Section 21-A.- Adoptions; Change in Registration; Confidential

If the birth of an adoptee had previously been registered in the Vital Statistics Registry, the registration certificate of such birth shall be substituted for another showing the new legal status of the registered minor, as if he were a legitimate child of the adopters; provided, that the original birth certificate of the adoptee, the judgment of the court, and other documents shall be kept in the Registry in a sealed envelope and shall be confidential documents. No registration certificate issued by the Registry shall contain date from the original registration, unless the petitioner of said certificate has expressly requested the showing of such facts and a competent court has so ordered for justified causes. Provided, that such authorization shall not be required when the applicant is the adopter or the adoptee.”

Section 5.- Section 21-D of Act No. 24 of April 22, 1931, as amended, is hereby amended to read as follows:

“Section 21-D.- Special Registry of Adoptees Born Outside of Puerto Rico and Adopted in Puerto Rico

In case the adoptee was born outside of Puerto Rico, but was adopted on the Island, it shall be the duty of the Chief of the Division of Demographic Registry and Vital Statistics of the Department of Health to transfer to the corresponding officer of the adoptee’s birth place, a certified copy of the judgment issued by the Court in the adoption case.

The Vital Statistics Registry shall keep a special registry for the registration of adoptions of persons born outside of Puerto Rico and adopted in Puerto Rico.”

Section 6.- The fourth paragraph of Section 23 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” is hereby amended to read as follows:

“Section 23.- Emergency Custody

...

Emergency custody referred to in this Section shall not exceed seventy-two (72) hours, except in those cases in which a Court authorization has been requested and obtained through the procedures set forth in this Act; or when it has not been possible to obtain said authorization because the Court is in recess.”

Section 7.- The second paragraph of Section 32 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” is hereby amended to read as follows:

“Section 32.- Legal Representation

...

The interests of a minor who, as alleged in Court, has been a victim of abuse, institutional abuse, neglect, and/or institutional neglect shall be represented by an Advocate for Family Affairs, appointed by the Governor for that purpose, who shall also have the ministerial duty of keeping the minor informed of the most relevant aspects of his case, to the extent that his intellectual and emotional abilities so allow.”

Section 8.- Section 37 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” is hereby amended to read as follows:

“Section 37.- Emergency Procedures

When emergency custody has been obtained pursuant to the provisions of Section 23 of this Act, or when the situation of the minor poses a risk to his safety, health, or physical, mental, or emotional integrity, the Department’s Social Worker or Family Services Technician may appear and, in a general, brief, and simple manner, using the form drafted to such effect by the Office of Courts Administration, testify under oath before a judge of the Court of First Instance as to the material facts that warrant requesting the protection of the minor by removing him from the home.

The Court shall make the determination it deems to be in the best interests of the minor, including an order granting emergency custody to place him immediately under the custody of the Department, to provide him with necessary medical treatment, to have provisional child support assigned for his benefit, and any other order that the judge deems shall best ensure his wellbeing. The minor shall not be taken outside the jurisdiction of Puerto Rico unless a court order is issued to that effect.

The Court shall be required to grant temporary custody to the Department if either the testimony given or the petition shows that the actions carried out by the mother, father, or legal guardian so warrant it, or that there is a risk to the safety or wellbeing of the minor.

In cases where temporary emergency custody is denied by a Municipal Court Judge, the Department or the interested party may appear before Family Court at the Superior Court of the Court of First Instance to request an ordinary minor custody hearing within twenty (20) days after the determination is issued.”

Section 9.- The first paragraph of Section 39 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” is hereby amended to read as follows:

“Section 39.- Custody Ratification Hearing

Within fifteen (15) days after the Municipal Court grants emergency custody to the Department of the Family, the Family Court of the Court of First Instance shall hold a ratification hearing.

...”

Section 10.- Section 42 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” is hereby amended to read as follows:

“Section 42.- Disposition Hearing

The Court shall hold a disposition hearing within a term that shall not exceed six (6) months after awarding temporary custody of the minor. This term may only be extended once, for an additional six (6) months, for just cause and when it is in the best interest and welfare of the minor.

Every decision providing the return of the minor to his home must be supported by a report prepared by a social worker, psychologist, or psychiatrist duly licensed in Puerto Rico, or a case worker trained in child protective services. The Department shall be responsible for submitting a report to the Court’s consideration in every disposition hearing, which report shall comply with the provisions of this Section. If the return of the minor to his home is recommended, the report shall reasonably conclude that the conditions of risk that were present at the time of said

minor's removal no longer exist and, thus, his return does not endanger the wellbeing, health, or physical, mental, emotional, or sexual integrity of the minor. However, in those cases in which the Court lacks such report, it may rule for the return of the minor to the home from where he was removed if, upon evaluation of the evidence available, it can determine that his return does not constitute a risk to his safety and best interests.

In those cases in which the Court determines that it is not advisable to return the minor to the home from where he was removed, or to another relative's home according to priority, custody shall be granted to the Department, or a proceeding may be initiated for termination of parental rights pursuant to the provisions of this Act. The Court shall also make any other necessary determination for the safety of the minor, taking his best interests into consideration.”

Section 11.- The second, next-to-last, and last paragraphs of Section 49 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” are hereby amended to read as follows:

“Section 49.- Reasonable Efforts

...

In cases in which reasonable efforts must be made, the determination on the reasonability of such efforts shall be made by the Court, taking into consideration whether the Department made a service plan available to the father, mother, or person responsible for the minor to address the specific needs identified, as well as the Department's diligence in providing such services, and any other element that the Court deems necessary.

...

In the cases of subsections (d) to (m), once the facts have been proven, the Court shall have no discretion and shall grant a waiver of efforts to the Department.

In those cases in which the Court determines that no reasonable efforts shall be made, a permanency hearing for the minor shall be held within fifteen (15) days following such decision.”

Section 12.- Subsections (b), (c) and (d), and the next-to-last paragraph of Section 52 of Act No. 246-2011, as amended, known as the “Child Safety, Well-being, and Protection Act,” are hereby amended to read as follows:

“Section 52.- Petition for Termination of Parental Rights

The Department may initiate proceedings for the termination, restriction, or suspension of parental rights under any of the following circumstances:

(a) ...

(b) When the Court has determined, in accordance with the provisions of this Act, that reasonable efforts do not proceed and, thus, orders that no reunification services shall be rendered;

(c) When the Court determines that the father and/or mother is unwilling or unable to assume responsibility and protect the minor from risks to his health and physical, mental, emotional, and/or sexual integrity, and these circumstances shall not change within a term of six (6) months after initiating proceedings, according to the evidence presented in the case.

(d) When the Court determines that the father and/or mother has not made efforts in good faith to rehabilitate himself and be reunified with the minor.

...

It shall not be necessary for the Department to file a petition for termination of parental rights if it decides to place the minor with a relative, or if it informs the Court that termination of parental rights is not in the best interests of the minor.

...”

Section 13.- The Department shall adopt and repeal rules and regulations as are necessary to implement this Act not later than one hundred eighty (180) days after it takes effect.

Section 14.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 85-2014 (H. B. 1943)** of the **3rd Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to repeal Act No. 248-2012, better known as the “Child Welfare Expedited Administrative Proceedings Act”; amend Sections 21 and 22 of Act No. 186-2009, as amended, known as the “Comprehensive Adoption Proceeding Reform Act of 2009”; amend Sections 21-A and 21-D of Act No. 24 of April 22, 1931, as amended; and amend Sections 23, 32, 37, 39, 42, 49 and 52 of Act No. 246-2011, known as the “Child Safety, Well-being, and Protection Act.”

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

In San Juan, Puerto Rico, on this 11th day of September, 2018.

Orlando Pagán-Ramírez
Director