

(S. B. 39)

(No. 92-2018)

(Approved April 17, 2018)

AN ACT

To add new subsections (b.1), (cc.1), and a section (tt) to Article 14; amend Article 25; and add a new Article 25A to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” for the purpose of ensuring the People’s right to self-defense in their dwelling, vehicle, and in the other places provided in this Act; and for other related purposes.

STATEMENT OF MOTIVES

The right to life is the most sacred and fundamental right enjoyed by every human being. Naturally, the right to protect life is intrinsic to the aforementioned right. Vindicating this right, thus guaranteeing the People’s safety, is an obligation inherent to the Government. This aforementioned obligation is the original reason behind humans’ social organization and, eventually, the formation of the State itself. Societies that lack sufficient security to stabilize the interactions among the sectors thereof are destined to face the collapse of their government systems.

Our Constitution condenses the essence of the social contract, which establishes the relationship between the rights of the People and the powers granted to the State, in order to ensure the exercise and full enjoyment of such rights. As expressed in the Statement of Motives of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” the Legislative Assembly recognizes its constitutional responsibility to safeguard the life, property and security of all members of society. In order to discharge this constitutional responsibility, the necessary measures must be taken to prevent, control, and reduce the crime rate. The State discharges its responsibility to provide security both actively, by maintaining the public order

through law enforcement agencies such as the police and the Department of Justice, and passively, by providing tools in the code of laws so individuals are able to defend themselves.

In order to achieve its enabling purpose and effective implementation, the Legislative Assembly bases the theoretical framework of Act No. 146, *supra*, on its need to clearly and genuinely reflect the values of our society. This includes the need to establish a code of laws that is consistent with Puerto Rico's social reality as well as comprehensive and flexible enough to be effective for the foreseeable future. Moreover, it should be flexible so it can adapt to ever-changing situations. As recognized in the Penal Reform of 1974, the Penal Code cannot benefit minorities in society, nor obey the personal or individual whims of the few. Unavoidably, it has to meet the needs of all sectors and interests, as they are interpreted in the broadest and most coherent manner possible.

Pursuant to this focus, a new framework of principles is established to govern the imposition of criminal penalties. The protection of society, serving justice to crime victims, and crime prevention are all made paramount.¹ Through the adoption of this new framework, we recognize the urgent need to fulfill our obligation to promulgate legislation that is consistent with Puerto Rico's current social reality, which favors the protection of victim's rights, and rebuilds the people's trust in the justice system.

The increase in the degree of violence used in the commission of crime is evident and this has led to more attacks against the physical integrity and life of citizens. This tendency increases the perceived inability of the State to provide security and to protect crime victims as well as the perceived disparity in the judicial system with regards to the rights of the victims and the rights of the accused. This

¹ Article 11, Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code"

situation provokes a state of constant anxiety and concern among the population with regards to their general safety and negatively affects the People's trust in the Government's ability to protect them from criminal activity. Therefore, our aim is to provide citizens with more legal protections so they are able to defend their lives or those of others at a place where society recognizes that the highest degree of intimacy, belonging, and personal autonomy should be expected. We acknowledge the need for and the right of every person to proactively ensure their safety and we shall provide them with the tools to do so.

For practical and historical reasons, dwellings shall always be recognized as sanctuaries where human beings seek refuge from the stresses and dangers of life. This definition includes any house, structure, ship, freight car, vehicle, or other building designed or adapted to or capable of providing shelter to human beings or that can be used to store things or animals or for business. Moreover, it includes its annexes, premises, and the lot where it is located. Dwellings provide a private space where the family unit may develop and allow for resting and relaxation, and for the enjoyment of moments of vulnerability which are inherent to a human's dignity. This Legislative Assembly has always recognized the unique importance bestowed upon this place in our society granting it special protections within the context of civil law by establishing procedures against evictions and mechanisms to prevent the loss of ownership in the event of a law suit. Likewise, the Legislative Assembly recognizes its importance within the context of criminal law by establishing offenses and aggravating circumstances based on actions that damage its integrity such as breaking and entering and burglary. The protections extended herein to vehicles, and place of business or employment result from the demands of modern life in which, day by day, citizens spend more time in such places and, therefore, they acquire the

characteristics that, historically, have only been attributed to the dwelling. Therefore, they should receive the same legal protections and justifications enjoyed by dwellings.

Up to this point, our code of laws has rationalized self-defense by imposing on the victim the burden of calculating the proportionality and the reasonableness of the means to be used as a defense against an aggressor. “Detached reflection cannot be demanded in the presence of an uplifted knife.”² The burden of proof with regard to the legitimacy of a person’s decision to use force to defend himself, a decision that must be made within a fraction of a second, should not be on the victim, but rather on the aggressor. It is not fair for victims who defend their lives or the lives of others in a specially protected place to have to face the consequences of making a decision under stress and danger, consequences that could entail a criminal trial if their acts are later determined to be unreasonable. A dilemma is created for the victims. If they make the mistake of using less force than is necessary, they themselves or others could face death or serious bodily harm; however, if it is determined excessive force was used, they could be criminally and/or civilly liable.

This measure establishes a presumption of reasonableness in the use of force under specific circumstances and shifts the burden of proof from the victim to the aggressor, on whom it should have always been. This does not grant an unlimited right to use force. The presumption only applies if the act took place within one of the four areas described in this statute. The Department of Justice can rebut it if it produces evidence proving the presumption does not apply to the actor.

The presumption of reasonableness protects the victim who defended his life or the lives of others based on a retrospective and isolated analysis of the facts that shall be conducted by an agent of the Department of Justice in order to determine

² “Detached reflection cannot be demanded in the presence of an uplifted knife.” *Brown v. United States*, 256 U.S. 335, 343 (1921). Justice Oliver Wendell Holmes, Jr.

the reasonableness of the response. The victim does not have the luxury of unlimited time to determine his course of action in the face of an immediate and imminent threat. Without the aid provided by this presumption, all of the victim's movements are subjected to close scrutiny for the purpose of proving that the force used was not reasonable.

It is our duty to ensure the People's safety. Every person should be able to focus on defending their own life or the lives of others without having to worry about the possibility of being criminally prosecuted or facing a civil lawsuit in the future. This shall maximize the protections available to the most vulnerable sector, which is comprised of crime victims under dangerous or potentially deadly circumstances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- New subsections (b.1), (cc.1), and a section (tt) are hereby added to Article 14 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code," to read as follows:

"Article 14.- Definitions.

Unless the context indicates otherwise, the words and phrases contained in this Code shall have the following meanings:

...

(b.1) 'Actor' means the person who, in the defense of his dwelling, vehicle, or place of business or employment, or in the defense of another person's dwelling, vehicle, place of business or employment, causes harm or death to a human being.

...

(cc.1) 'Dwelling' shall have the same meaning as 'Building' in this Article.

...

(tt) ‘Vehicle’ shall mean any device or animal in which or through which any person or property is or can be transported through any land, sea, or air route, whether it is self-propelled or hauled, and whose classification is not included in the terms ‘Building’ or ‘Occupied Structure’ as they are defined in sections (p) and (q) of this Article.”

Section 2.- Article 25 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 25.- Self-Defense

Any person who defends his life, dwelling, property or rights, or the life, dwelling, property, or rights of another under circumstances where there is a reasonable fear of imminent harm shall not be criminally liable, provided that there was a reasonable need for the means used to prevent or avoid harm, there was no provocation by the party claiming self-defense, and that no more harm than necessary is inflicted to avoid or prevent harm.

When alleging self-defense to justify causing death to a human being, it is necessary to have reasonable belief that when causing death to the aggressor, the aggrieved or defending person was in imminent or immediate danger of death or serious bodily harm. To justify defense of dwelling, vehicle, place of business or employment, the circumstances shall indicate trespassing of dwelling, or that the person in the dwelling, vehicle, or place of business or employment has reason to believe that an offense shall be committed, pursuant to what is provided in Article 25A. To justify the defense of property or rights, the circumstances shall indicate an attack on the same that constitutes an offense or that poses serious danger of deterioration or imminent loss.”

Section 3.- A new Article 25A is hereby added to Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” to read as follows:

“Section 25A.- Presumptions and Provisions on Self-Defense in Dwellings, Vehicles, or Places of Business or Employment.

(a) It shall be presumed that the actor had a reasonable belief that he or another person was at risk of suffering imminent physical harm, that there was no provocation by the actor, and that there was a reasonable need for the means used and for the harm caused to prevent or avoid harm if:

(1) the actor knew or had reason to believe that the person against whom force or violence was used:

(i) unlawfully entered or was attempting to unlawfully enter the dwelling, vehicle, place of business or employment occupied at that moment by the actor or the person the actor protects; and/or

(ii) kidnapped or attempted to kidnap the actor or another person who was inside the dwelling, vehicle, or place of business or employment of the actor or the person the actor protects.

(b) The presumption established in section (a) shall not apply if:

(1) the person against whom force or violence was used had the legal right to stay, reside, live, or occupy the dwelling, vehicle, or place of business or employment where the force or violence was used due to, but not limited to, being an owner, title holder, tenant, contractor, employee; or

(2) the person kidnapped or against whom there was an attempted kidnapping is a minor or disabled person under the legal custody or guardianship of the person against whom force or violence was used; or

(3) the actor provoked the person against whom force or violence was used; or

(4) the actor was committing a crime at the time the force or violence was used or used the dwelling, vehicle, or place of business or employment to engage in criminal activity; or

(5) the person against whom force or violence was used is a Law Enforcement Officer, as defined in Article 14 of this Code.

(c) Having caused death to a human being, reasonable belief shall be presumed for the actor who, at the time of causing death to the aggressor, he himself or the person he defended were in imminent or immediate risk of death or serious bodily harm if:

(1) the actor knew or had reason to believe that the person to whom he caused death:

(i) unlawfully entered or was attempting to enter unlawfully the dwelling, vehicle, place of business or employment occupied at that moment by the actor or the person the actor protects; and/or

(ii) kidnapped or attempted to kidnap the actor or another person who was inside the dwelling, vehicle, or place of business or employment of the actor or the person the actor protects.

(d) The presumption established in section (c) shall not apply if:

(1) the person to whom he caused death had the legal right to stay, reside, live, or occupy the dwelling, vehicle, or place of business or employment where the force or violence was used due to, but not limited to, being an owner, title holder, or tenant; or

(2) the person kidnapped or against whom there was an attempted kidnapping is a minor or disabled person under the legal custody or guardianship of the person against whom deadly force was used; or

(3) the actor provoked the person to whom death was caused; or

(4) the actor was committing a crime at the time of causing death or used the dwelling, vehicle, or place of business or employment to engage in criminal activity; or

the person to whom death was caused was a Law Enforcement Officer, as defined in Article 14 of this Code.

(e) In order to determine the validity of self-defense, the trier of fact shall not take into consideration the possibility of the actor could have avoided the confrontation.

(f) Law enforcement agencies shall have the power to investigate the use of force or violence, or the cause of death of a human being as provided in this Article.

(g) A person who acting in self-defense uses force against or causes death to a human being in accordance with the provisions of this Article shall not be criminally or civilly liable for the harm or death caused to the aggressor.

(h) The presumptions established in this Article are rebuttable presumptions. The Department of Justice may rebut the presumption by producing evidence to establish that the presumption does not apply to the actor.”

Section 4.- 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.

Article 5.- This Act shall take effect thirty (30) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 92-2018 (S. B. 39)** of the **3rd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to add new subsections (b.1), (cc.1), and a section (tt) to Article 14; amend Article 25; and add a new Article 25A to Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code," for the purpose of ensuring the People's right to self-defense in their dwelling, vehicle, and in the other places provided in this Act; and for other related purposes.

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

In San Juan, Puerto Rico, on this 28th day of June, 2018.

Orlando Pagán-Ramírez
Director