

(H. B. 4263)

(No. 100)

(Approved April 23, 2004)

AN ACT

To amend Section 2.1 and add Section 2.1A to Chapter II of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” to prohibit mutual restraining orders unless each party has filed an independent petition thereto in which a person requests a protection order against another; has been notified of the request filed by the other party, and demonstrates, through a hearing, that the other party incurred in domestic abuse and that the domestic abuse was not in self defense.

STATEMENT OF MOTIVES

The Commonwealth of Puerto Rico is committed to the fight to eradicate inequity in the relationships between men and women, and especially in its most critical and severe manifestation: domestic abuse. In the statement of public policy of Act No. 54 of August 15, 1989, as amended, it is stated that “the Government of Puerto Rico assertively repudiates domestic abuse as contravening the values of peace, dignity and respect that the People should maintain for individuals, families, and the community in general. This public policy propitiates the development, establishment and strengthening of effective measures to give protection and help to the victims, options for the rehabilitation of the transgressors and strategies for the prevention of domestic abuse.”

In order to propitiate the development, establishment, and strengthening of effective measures to give protection and help to domestic abuse victims,

the Judges of the Court of First Instance and the Municipal Judges were empowered to issue orders directed against the transgressor so that he/she abstains from incurring in said behavior toward the victim. These affirmative protective measures respond to the interest of the Legislature to seek the safety, health, and welfare of domestic violence victims by preventing future incidents of the proscribed behavior. This is a remedy of civil nature, for which the Act establishes a simple process to have it available to those who need it.

Protection orders are affirmative protective measures directed to returning to the domestic abuse victims the safety and tranquility that has been seized from them by the abusive behavior of his/her partner. However, on many occasions these orders are issued against domestic abuse victims even when the other party is not interested or has not requested the same. The action of the Court of issuing such an order stigmatizes and humiliates the victims, since it unjustifiably penalizes them. On other occasions, even when the defendant requests it, the courts grant the petition without hearing any other type of evidence or by just hearing the evidence on violent conduct from one of the parties. Such behavior constitutes a violation of the order of Act No. 54, *supra*, which demands the court to determine that there is sufficient cause to believe that the petitioner has been a domestic abuse victim to issue a protection order. Also, regardless of the manner in which the same are issued, the unfavorable consequences thereof surpass the possible benefits that could be argued in their favor.

Section 7 of Article II of the Constitution of the Commonwealth of Puerto Rico states that the right to life, liberty, and the enjoyment of property is recognized as a fundamental right of the human being. To such effects it recognizes that no person shall be deprived of his liberty or

property without due process of law. Therefore, people have a basic constitutional right to due process of law, which begins with the right to receive an appropriate notification on what he/she is accused of and the nature of the remedy being requested.

Mutual restraining orders violate the right to due process of law of the person against whom such order is requested, when the petition is not appropriately served before the hearing on the party that originally requested it. The right to due process of law is violated because the person does not receive previous notification on any allegations. Without notification of the alleged culpable act, it is impossible to appropriately prepare a defense. Furthermore, the right to due process of law of the person against whom the order is issued is violated when such order is issued without hearing evidence of the acts of violation, especially when the other party did not request the same. Court rulings that find sufficient cause to determine domestic abuse and appropriate notifications guarantee compliance with due process of law and that the liberty of innocent victims is not curtailed.

The Congress of the United States has addressed the legal problem that mutual restraining orders generate through the legislation contained in the "Violence Against Women Act of 1994," Pub.L.-322, Sept. 13, 1994, 168 Stat. 1902 and subsequently in the amendments of 2000, Pub.L. 106-386, Oct. 28, 2000, 114 Stat. 1491(VAWA.) Said legislation excluded mutual restraining orders due to the belief that many of them are issued without complying with minimum legal standards. The provisions of the VAWA preclude mutual restraining orders issued in favor of the respondent from being given full faith and credit due to the belief that many of them are issued without complying with the minimum requirements of due process of law. On the contrary, it limits the recognition of said orders to those that

would be requested by the respondent and in which the court would have had specific findings that each party were entitled thereto. In addition, each state that has considered the validity of these orders has determined that in the absence of a request by the petitioner and specific determinations that each party deserves said protection, the same violate due process of law for lacking a reasonable notification and the opportunity to be heard. Section 2265 of the VAWA explicitly directs that states, U.S. territories, and Indian tribes enforce civil and criminal protection orders issued by foreign jurisdictions as they were issued by the state or tribal court in which the same are intended to be enforced. The protection of the Act extends to protection orders issued in the 50 States, Indian lands, the District of Columbia, the US Virgin Islands, Puerto Rico, Samoa, Mariana Islands and Guam. The referred clause not only identifies domestic abuse as a national problem, but also reaffirms the right of abused women to travel and recognizes the need for giving protection wherever they are. Also, if the state or tribal court, in which the order is to be enforced, provides higher substantive protection than the state or tribal court that issued the same, such protections shall also be guaranteed. On the other hand, any mutual restraining orders issued without complying with the minimum legal standards demanded by due process of law, grant more power to the offender since it provides him/her another tool to control and manipulate the victim, takes away the seriousness of the domestic abuse problem, and promotes society's trivialization of abuse. Issuing orders to both parties without evidence to sustain it is like considering domestic abuse as something so insignificant that it neither deserves the attention nor the time of the courts to identify the offender. Self defense shall not be treated as an act of domestic abuse. Domestic abuse is an act directed to exert control and power over the

victim in order to subordinate him/her. This is the type of behavior we seek to prevent and fight against, and for which the protection orders mechanism is available.

Mutual restraining orders issued without complying with the minimum requirements ordered by due process of law attack the self esteem of the victims, send a wrong message to society and devalue the seriousness of the domestic abuse problem. Mutual restraining orders are not only not in harmony with the Statement of Motives nor with the public policy of Act No. 54, *supra*, but are also contrary to the same.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 2.1 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 2.1.—Protection Orders.—

Any person who has been the victim of domestic abuse, or conduct which constitutes said crime as described in this Act or in Act No. 115 of July 22, 1974, as amended, known as the “Penal Code of the Commonwealth of Puerto Rico,” or in any other special law, in the context of a couple’s relationship, may file a petition in court and request an order for protection, *motu proprio*, or through legal counsel, or through a law enforcement officer, without having first filed a suit or complaint. When the court determines that there is sufficient cause to believe that the petitioner has been a victim of domestic abuse, it may issue an order for protection. Said order may include the following, without it being construed as a limitation:

- (a) ...
- (b) ...

- (c) Order the respondent to abstain from molesting, harassing, pursuing, intimidating, threatening or interfering in any way with the exercise of provisional custody over the minor children that have been adjudicated to one of them.
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) ...
- (i) ...
- (j) ...
- (k) ...”

Section 2.—Section 2.1A is hereby added to Chapter II of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” to read as follows:

“Section 2.1A.—Prohibition Against the Issue Mutual Restraining Orders.—

The Court shall not issue mutual restraining orders to the parties, unless each of the parties:

- (a) has filed an independent petition requesting a protection order against the other party;
- (b) has been notified of the petition filed by the other party;
- (c) proves in an evidentiary hearing that the other party incurred conduct which constitutes domestic violence; and
- (d) proves that the domestic violence did not occur within a self-defense context.”

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. 100 (H.B. 4263) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 2.1 and add Section 2.1A to Chapter II of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” to prohibit mutual restraining orders unless each party has filed an independent petition thereto in which a person requests a protection order against another; has been notified of the request filed by the other party, and demonstrates, through a hearing, that the other party incurred in domestic abuse and that the domestic abuse was not in self defense,

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

In San Juan, Puerto Rico, today 2nd of November of 2006.

Francisco J. Domenech
Director