

(S. B. 435)

(No. 113-2017)

(Approved November 15, 2017)

AN ACT

To amend Article 110 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” in order to differentiate negligent injury that involves a bodily injury that requires hospitalization and prolonged treatment from mayhem; amend the penalties; and for other related purposes.

STATEMENT OF MOTIVES

The principles that govern the application of criminal penalties in Puerto Rico are compiled in Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code” (Penal Code of 2012). Section 11 of said Act institutes as a tenet that penalties shall be established in proportion to the seriousness of the crime. Moreover, it provides that the penalties established must be necessary and appropriate to achieve the purposes of said Penal Code.

The Criminal Law in Puerto Rico has been subject to a series of changes, both technical and philosophical, through the enactment of several Penal Codes that have become part of our legal history. These changes are the result of an ongoing revision process in search of adjusting our code of laws to the social reality and values of the society for which it is legislated.

Proof of the foregoing can be found upon studying the changes that took place after the repeal of Act No. 115 of July 22, 1974, as amended, known as the “Puerto Rico Penal Code of 1974,” where assault and mayhem were only classified as crimes when committed with intent, and those that occurred out of negligence were excluded. It was not until the enactment of Act No. 149-2004, now repealed, known as the “Penal Code of 2004,” that a type of injury entailing negligence was classified

as a crime under former Article 124. This type of crime was limited to cases where the bodily injury caused by negligence was sufficiently severe so as to require hospitalization or prolonged treatment, or when there was permanent damage or mayhem.

Subsequently, however, the Legislative Assembly enacted the Penal Code of 2012, which introduced a new legal theory of this crime to our criminal code of laws. This doctrine emphasized the attribution of responsibility based on how dangerous the offense is in terms of jeopardizing or damaging a protected legal asset. With this approach, the punishable action became the focus of the penalty to be imposed. This doctrine differs from the one that was in effect until the approval of said new Penal Code, whose emphasis was the principle of subjectivity which establishes the knowledge of the unlawfulness and the individual's willingness to commit the crime as the basis for liability.

Lastly, the Penal Code of 2012 sets forth in Article 110 that negligent injury is a crime and provides for the imposition of a penalty of imprisonment for a fixed term of three (3) years on any person who, due to negligence, causes bodily injury requiring hospitalization or prolonged treatment, or permanent damage or mayhem.

Upon a thorough examination of the Penal Code of 2012, Article 110 was identified as one of various legal inconsistencies therein. Moreover, upon examining previous Articles, such as Article 108, we noticed that simple battery was classified as a crime when: "Any person who, through any means or form, illegally inflicts injury to the bodily integrity of another [...]." In addition, Article 109 classifies aggravated battery as a felony. If the battery, as provided in Article 108, causes an injury that requires hospitalization or prolonged treatment, excluding mayhem, it shall be punished by imprisonment for a fixed term of eight (8) years. Article 109 further provides that if the battery results in mayhem, it shall constitute a felony

punishable by imprisonment for a fixed term of fifteen (15) years. Said Article defines “mayhem” as “causing permanent bodily damage to a person, face disfigurement, or permanently disable all capability to hear, see, or listen.”

The consolidation of the penalties for offenders who commit mayhem and negligent injuries that only require hospitalization is inconsistent with the new legal theory established in the Penal Code of 2012, and contradicts the principle of proportionality between the crime and the punishment, and the principle of doing justice to the crime victims.

The amendments to the Penal Code of 2012 introduced herein contribute to the goal of achieving uniformity in our criminal code of laws by eliminating inconsistencies and adjusting Article 110 to the legal theory of the crime in effect therein.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Article 110 of Act No. 146-2012, as amended, is hereby amended to read as follows:

“Article 110.- Negligent Injury.

Any person who, due to negligence, causes bodily injury requiring hospitalization or prolonged treatment shall be guilty of a misdemeanor and punished by imprisonment for a fixed period of three (3) years.

If the negligent injury causes mayhem, the offender shall be guilty of a felony and punished by imprisonment for a fixed period of eight (8) years.

Mayhem shall mean to cause permanent bodily damage to a person, face disfigurement, or permanently disable all capability to hear, see, or listen.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 113-2017 (S. B. 435)** of the **2nd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to amend Article 110 of Act No. 146-2012, as amended, known as the "Puerto Rico Penal Code," in order to differentiate negligent injury that involves a bodily injury that requires hospitalization and prolonged treatment from mayhem; amend the penalties; 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 9th day of August, 2019.

Orlando Pagán-Ramírez
Director