

(S. B. 453)
(Conference)

(No. 217-2010)

(Approved December 28, 2010)

AN ACT

To amend Section 3.06 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to consider a suspended imposition of sentence under said Section as recidivism if the person is convicted again of violations of any of the provisions of this Act.

STATEMENT OF MOTIVES

Section 3.06 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” provides everything related to the Diversion Program granted to persons who have been convicted of any of the crimes classified under this Act. It grants the judge discretion so that, once there is a determination of guilt, the convicted person may be released on probation, provided he/she complies with the conditions provided by law. [Our translation] *Pueblo v. Rodríguez Meléndez*, 150 P.R.R. 519 (2000). The Supreme Court of Puerto Rico has issued statements several times regarding Diversion Programs, indicating they are a type of penalty with a rehabilitation component that was not substantially different from a probation after judgment. [Our translation] See *Pueblo v. Rodríguez*, 2000 T.S.P.R. 146.

At present, the Court may, at its discretion, dismiss the accusations against a convicted person who participates in a Diversion Program and meets all conditions imposed by the Court after the competent personnel in charge of such Program makes a recommendation and a hearing is held, **without taking into account said conviction for purposes of recidivism** and exonerate the accused of all charges.

Statistics showing a day-by-day increase in cases of abuse, violence, assault, and even death classified under Act No. 54 are alarming. Given the pressing interest of the State to protect life and provide security for citizens, we believe that convicted persons whose punishment has practically been condoned so that they may rehabilitate and who, after having completed such Rehabilitation Program, once again commit assault under Act No. 54, do not deserve to be treated as first-time offenders, but rather recidivists for purposes of imposing punishment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Article 3.06 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:

“After the trial, and upon conviction, or if the accused pleads guilty to any of the crimes classified in this Act, the Court may, *motu proprio*, or upon request of the Prosecuting Attorney’s Office or the defense, suspend all procedures and release the convicted person on probation, provided he/she participates in a reeducation ...

The diversion alternative shall only be available under the following circumstances:

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

The Court shall take into consideration the opinion of the victim as to whether or not this benefit should be granted, and shall impose the terms and conditions it deems reasonable, as well as the duration of the probation requested, upon prior agreement with the entity that shall render the services, which term shall never be less than one (1) year nor more than three (3) years.

If the person benefitted by the probation established in this Article fails to meet the conditions thereof, the Court, after holding a hearing, may revoke the probation and pronounce judgment.

If the person benefitted by the probation established in this Article does not violate any of the conditions thereof, the Court, after holding a hearing, may revoke the probation and pronounce judgment.

If the person benefitted by the probation established in this Article does not violate any of the conditions thereof, the Court, upon previous recommendation of the competent personnel in charge of the program to which the accused was referred in the exercise of its discretion, and after holding a hearing, may hand down a suspended imposition of sentence to him/her.

A suspended imposition of sentence pursuant to this Section shall be conducted without the pronouncing of judgment by the Court, but the case file shall be kept in the Court, confidentially, inaccessible to the public, and separate from other cases for the purpose of being used by the Courts to determine, in subsequent proceedings, if the person qualifies for the benefits of this Article, and to be considered a recidivist, if such person subsequently commits any of the offenses classified in this Act. In such cases, it shall be the responsibility of the prosecuting attorney to always make an allegation of recidivism.

A suspended imposition of sentence shall not be considered a conviction for purposes of disqualification or incompetence imposed by law on convicts for the commission of a crime, and the exonerated person shall be entitled, after a suspended imposition of sentence, to have the Superintendent of the Puerto Rico Police Department return any file of fingerprints and photographs in the custody of such Department taken in connection with the violation of the crimes that caused charges to be filed.

A suspended imposition of sentence under this Article may only be granted once to any person.”

Section 2. This Act shall take effect immediately upon approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 217-2010 (S. B. 453)** **(Conference)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend Section 3.06 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to consider a suspended imposition of sentence under said Section as recidivism if the person is convicted again of violations of any of the provisions of this Act.

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

In San Juan, Puerto Rico, on this 16th day of August, 2013.

Juan Luis Martínez Martínez
Acting Director