

(H.B. 3038)

(No. 222)

(Approved August 21, 2004)

## AN ACT

To amend subsection (a) of Section 3.6 of Act No. 54 of August 15, 1989, known as the “Puerto Rico Domestic Abuse Prevention and Intervention Act,” in order to clarify the circumstances that must exist so that the alternative of diversion may be granted.

### STATEMENT OF MOTIVES

Act No. 54 of August 15, 1989, known as the “Puerto Rico Domestic Abuse Prevention and Intervention Act,” was created as part of the public policy that seeks to preserve the physical and emotional integrity of the individual as well as the health and collective peace of the Puerto Rican people. For this Act to be effective it must be clear and concise; it cannot lend itself to interpretations that may go against the intention of the legislator that created the same.

The Diversion Program under said Act No. 54 is a *sui generis* program that gives the person accused of abuse the opportunity of having his/her sentence suspended and being sent to participate in a rehabilitation program whose term shall never be of less than one (1) year, nor of more than (3) years; without recidivism of these violations, the case shall be dismissed and the accused shall be exonerated of the charges.

The Supreme Court of Puerto Rico on several occasions has expressed itself regarding said diversion programs indicating that this is a modality of the penalty of a rehabilitating nature that is not substantially different from probation after sentencing. See *Pueblo vs. Rodríguez* 2000 TSPR 146. In such a case, a person who has been sent to join a diversion program cannot enjoy a second opportunity within this program since Section 3.6 (a) of the Act automatically rejects those persons who have been previously convicted for committing the offenses established in that Section. With this amendment we reaffirm the ruling in *Pueblo vs. Rodríguez, supra*, to wit, that a person who commits an infraction against Act No. 54 or who commits offenses related to that same Act while enjoying the privilege of a diversion program under Act No. 54, may not be given a suspended sentence. However, certain cases have arisen whereby said provision has been erroneously interpreted and the privilege of a diversion program has been granted to persons who have violated the Act a second time.

It is imperative that this Legislature ensure the effectiveness and scope of the legislation it creates. It is for this reason that the text of this Act is modified so as to ascertain the legislative intention behind its creation.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.-Subsection (a) of Section 3.6 of Act No. 54 of August 15, 1989, known as the “Puerto Rico Domestic Abuse Prevention and Intervention Act,” is hereby amended to read as follows:

“Section 3.6.-Diversion from procedure

After the trial and upon conviction, or should the accused plead guilty to any of the crimes typified in this Act, the court may, *motu proprio*, or upon request of the Prosecuting Attorney’s Office or of the defense, suspend all procedures and submit the convicted person to probation, provided he/she

participates in a reeducation or retraining program for persons who incur abusive conduct in a relationship as a couple. Prior to making any determination in that respect, the court shall hear the Prosecuting Attorney. Provided, that in the case of the crime of conjugal sexual assault, diversion from the procedures shall only be available in those cases in which the accused is the spouse or person who cohabits with the victim at the time of the sexual assault, provided that said cohabitation is not adulterous and complies with the circumstances provided hereinafter.

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

(a) If it involves a person who has not been previously convicted and imprisoned as the result of a final sentence or is enjoying the benefit of a diversion program under this Act or a suspended sentence for the commission of the crimes established in this chapter or similar crimes established in the Laws of the Commonwealth of Puerto Rico or of the United States against his/her spouse, former spouse, person with whom he/she cohabits or has cohabited, person with whom he/she has or has had a consensual relationship or person with whom he/she has procreated a son or daughter.

(b) ...

(c) ...

...

...”

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. 222 (H.B. 3038) of the 7<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend subsection (a) of Section 3.6 of Act No. 54 of August 15, 1989, known as the “Puerto Rico Domestic Abuse Prevention and Intervention Act,” in order to clarify the circumstances that must exist so that the alternative of diversion may be granted,

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

In San Juan, Puerto Rico, today 9<sup>th</sup> of September of 2005.

Francisco J. Domenech  
Director