

(S. B. 2925)

(No. 485)

(Approved September 23, 2004)

AN ACT

To amend Section 2.5 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to extend the term of effectiveness of ex parte orders for protection from five (5) to twenty (20) days.

STATEMENT OF MOTIVES

The Commonwealth of Puerto Rico is committed to strive for the eradication of inequity in the relationships between men and women, and especially in its most critical and severe manifestation: domestic abuse. In the declaration of public policy of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” it is declared that “[t]he 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 remedies to provide protection and assistance to the domestic abuse victims, the judges of the Court of First Instance, superior and municipal courts were given the power to issue orders against the aggressor so that they abstain from incurring certain conduct with respect to the victim. These affirmative protection measures respond to the interest of the Legislature to ensure security,

health and the welfare of the victims of domestic abuse by preventing future incidents of the proscriptive conduct. These measures are a remedy of civil nature for which the law establishes a simple proceeding in order to make it readily available to the person who needs them.

Section 2.5 of Act No. 54, *supra*, establishes that the court may issue an ex parte order for protection if it determines that diligent attempts have been made to serve the respondent with a copy of the summons issued by the court and of the petition that has been filed before the court without success; or there is a probability that giving prior notice to the respondent will provoke irreparable harm which the order for protection is intended to prevent; or when the petitioner shows that there is a substantial probability of immediate risk of abuse. It is further provided that, if the order is issued, the court shall docket a hearing within five (5) days following the issuing of said ex parte order, during which the court may render the order ineffective or extend its effect for the term it deems necessary.

Several sectors including judges have agreed with respect to the need to extend the term to hold the hearings for ex parte orders for protection, in other words, the term of effectiveness thereof, to twenty (20) days. Said extension is recommended so that protection may be provided to the domestic abuse victim for a longer term and, at the same time, for those called upon to serve such orders, such as bailiffs and law enforcement officers to have more time to locate and serve the aggressor.

Furthermore, this term enables the court to remit the issued orders to courts with jurisdiction after working hours and shifts within the required term, and both the parties and the court to be ready for the hearing on the merits.

A term of twenty (20) days to process the ex parte orders for protection under the special procedures established by Act No. 54, *supra*, meets the requirements set forth in *Domínguez Talavera v. Superior Court*, 102 D.P.R. 423 (1974). In this case, it was resolved that due process of law does not require the holding of a

preliminary hearing prior to depriving a person of his/her property by an ex parte action: “Compliance with the due process of law -- upon prohibiting that a person be deprived of his property by an ex parte action -- does not require a preliminary hearing or one prior to the seizure, if said hearing is provided at a subsequent stage and before a final determination is made.” *Id.*, 428.

The court stated that due process of law is safeguarded if a hearing is held prior to issuing a final adjudication, if there is a written sworn statement containing the allegations, if the respondent is summoned to a hearing within (20) days, and if the claim is filed in good faith. The procedure for processing ex parte orders for protection, establishing the term for holding the hearing as ten (10) days, meets these requirements.

On the other hand, the terms of effectiveness of ex parte orders for protection in almost all of the states and territories of the United States are longer than ten (10) days. In most states, the court must order a hearing on the merits on orders for protection within two (2) to four (4) weeks from the issuing of the ex parte order for protection, while in some states such orders may remain in effect for a long time without requiring a renewal. See: ALASKA STAT. § 18.66.110 (Michie 2002); ARK. CODE ANN. § 9-15-206 (Michie 2002); CAL. FAM. CODE § 546 (Deering 2002); COLO. REV. STAT. § 13-14-102 (2002); CONN. GEN. STAT. ANN. § 46b-15 (West 2001); DEL. CODE ANN. tit. 10, § 1043 (2002); D.C. CODE ANN. § 16-1004 (2002); FLA. STAT ANN. § 741.30 (West 2002); IDAHO CODE § 39-6308 (Michie 2002); 235 ILL COMP. STAT. 5/3-110 (2002); IOWA CODE § 236.4 (2002); KY. REV. STAT. ANN. § 403 (Michie 2002); LA. REV. STAT. ANN. § 46:2135 (West 2002); ME. REV. STAT. TIT. 19, § 4006 (West 2002); MD. CODE ANN., Fam. Law § 4-505 (2002); MASS. GEN. LAWS ch. 209A, § 4 (2002); MISS. CODE ANN. § 93-21-11 (2002); MONT. CODE ANN. § 40-4-121 (2002); N.J. STAT. ANN. § 2C:25-29 (West 2002); N.M.

STAT. ANN. § 40-13-4 (Michie 2002); N.C. GEN. STAT. § 50B-2 (2002); N.D. CENT. CODE § 14-07.1-02 (2002); OKLA. STAT. ANN. tit. 22, § 60.4 (West 2003); R.I. GEN. LAWS § 15-15-4 (2002); S.D. CODIFIED LAWS § 25-10-7 (Michie 2002); TENN. CODE ANN. § 36-3-605 (2002); TEX. FAM. CODE ANN. § 83.002 (Vernon 2002); UTAH CODE ANN. § 30-6-4.3 (2002); VT. STAT. ANN. tit. 15, § 1104 (2002); VA. CODE ANN. § 16.1-253.1 (Michie 2002); WASH. REV. CODE § 26.50.070 (2002); W. VA. CODE § 48-27-403 (2002); ALA. CODE § 30-5-7 (2002); ARIZ. REV. STAT. § 13-3602 (2002); GA. CODE ANN. § 19-13-4 (2002); HAW. REV. STAT. § 604-10.5 (2002); IND. CODE § 34-26-5-9 (2002); MICH. COMP. LAWS § 600.2950 (2002); MINN. STAT. ANN. § 518B.01 (West 2002); MO. ANN. STAT. § 455.040 (West 2001); NEB. REV. STAT. § 42-925 (2002); N.H. REV. STAT. ANN. § 173-B:4 (2002); OR. REV. STAT. § 107.718 (2001); 23 PA. CONS. STAT. § 6107 (2002); S.C. CODE ANN. § 20-4-70 (Law. Coop. 2002).

Furthermore, in some states ex parte orders for protection may be renewed if the petitioner has not been able to summon the respondent of the hearing. See: KY. REV. STAT. ANN. § 403.740 (Michie 2002); OKLA. STAT. ANN. tit. 22, § 60.4 (West 2003); TEX. FAM. CODE ANN. § 83.002 (Vernon 2002); Lininger, Tom. *A Better Way to Disarm Batterers*, 54 *Hastings L.J.* 525 (2003).

Section 306 of the *Model Code on Domestic and Family Violence* of the National Council of Juvenile and Family Court Judges of 1994 establishes that ex parte orders for protection shall remain in effect until a court resolves otherwise. The comment for said section states, among other things, that said provisions are separate from the duration restrictions found in the statutes of some states, because the risk of violence over the victims cannot be determined based upon time. The purpose of the section is to protect victims during the time that said protection is necessary, which must be decided by the court after a hearing: the expiration of a

term for an ex parte order for protection should not be based arbitrarily on time elapsed.

In practice, the summons to the order of protection hearing is generally not served to the respondent within five (5) days, therefore it is an inadequate term. Victims of domestic abuse are affected when the summons cannot be served within the term of effectiveness of ex parte orders for protection, because it places them at risk by leaving them unprotected as soon as the orders expire. The above causes the petitioner to return constantly to the court in order to request new orders of protection. This situation congests court dockets, and causes duplication of procedures and inefficiency in the use of personal time and resources in the legal system.

The Legislature understands that the increase in the term of effectiveness of ex parte orders of protection from five (5) to twenty (20) days is necessary for the better administration of justice by tending toward a more adequate use of the time and resources of the judicial system, lessening the load of the judicial docket. Even more importantly, it guarantees safety for the victims of domestic abuse by sheltering them with the orders for protection for a longer term, so that in effect the hearing summons may be served within the term of effectiveness of the orders. State legislation in the United States of America and the model codes provide longer terms and do not even contain time restrictions. Moreover, a term of twenty (20) days for the processing of the ex parte orders for protection in the special procedure established by Act No. 54, *supra*, safeguards the constitutional right to due process of law guaranteed by the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 2.5 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 2.5.- Ex parte orders

Notwithstanding what is established in other legal provisions, the court may issue an ex parte order for protection if it is determined that:

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

Whenever the court issues an ex parte order for protection, it shall do so provisionally, it shall immediately serve the respondent with a copy thereof or in any other manner, and shall give the party an opportunity to object to it. To such effect, it shall docket a hearing to be conducted within twenty (20) days following the issue of said ex parte order, unless the respondent requests a postponement to such effect. During said hearing, the court may render the order ineffective, or extend its effects for the term it deems necessary.”

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. 485 (S.B. 2925) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 2.5 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to extend the term of effectiveness of ex parte orders for protection from five (5) to twenty (20) days,

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

In San Juan, Puerto Rico, today 15th of September of 2008.

Francisco J. Domenech
Director